

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 agreed 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. It also does not include those situations where obligations are secured "in time".

This report covers the period between 12th September 2017 (when the Committee last received a similar report) and the date of the preparation of this report (24th November 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 9 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 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 (LPA) in providing instructions. A series of extensions were agreed.

The Unilateral Undertaking to secure visibility splays was completed on the 25th August. However, the Section 106 agreement has still not been completed but it is nearing completion and a draft agreement has been in circulation for a number of weeks. In the absence of any material change in planning circumstances the Head of Planning has previously agreed to extend the period within which the agreement may be completed on a number of occasions and the latest agreed date is the 30th November. Therefore a further report on progress may be able to be given to the meeting on the 5th December.

Some 55 weeks have now passed since receipt of the application.

(2) Land off Eccleshall Road, Loggerheads.. 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 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 Section 106 agreement was not completed by the 3rd March 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.

The latest position is that the applicant's solicitor now has from the LPA's solicitor a draft of the agreement although the LPA's solicitor is still awaiting instructions from the Education Authority. Given the fairly recent receipt of this draft, it would be unreasonable to "time out" the application at present, and in the absence of any material change in

planning circumstances, your Officer has agreed to further extend the period within which the Section 106 may be completed, to the 20th December. If there are any developments before the 5th December they will be reported to the Committee.

Some 56 weeks have now passed since receipt of the application.

(3) Land around Wilmot Drive Estate 17/00281/FUL

This application for full planning permission for the erection of 276 dwellings, public open space and associated infrastructure works came before the Planning Committee at its meeting on the 18th July (at around week 15). The resolutions of the Committee inter alia required obligations be entered into securing a financial contribution of £60,000 towards a Multi-Use Games Area, an undefined sum towards off site highway works, commuted off site affordable housing payments, 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 requirement that the agreement containing these obligations should be completed by the 25th August.

That date passed without the obligations being secured following delays on behalf of the Council. There were also further delays and your Officer agreed to extend the time within which the agreement could be completed on a couple of occasions and the latest deadline by which the agreement should be completed is the 13th December.

Some 33 weeks have now passed since receipt of the application.

(4) 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 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 18th July (at around week 19). The resolution of the Planning Committee included a time limit for the securing, by the 18th August 2017, of planning obligations 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 agreement was always challenging given the timescales. However, further delays were encountered on both sides and your Officer agreed to extend the time for the completion of the S106 on several occasions. The agreement was finally completed on the 7th November and the decision notice on the application was issued "in time" on the 9th November.

The decision was issued in this case some 37 weeks after receipt of the application

(5) Former Bristol Street Ford Garage 16/01106/FUL

This application for full planning permission for full planning permission for 499 studio apartments for student occupation came before the Planning Committee at its meeting on the 15th August 2017 (at around week 21). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £1,199,396 towards public open space and public realm improvement; the agreement and implementation of a landscaping scheme involving tree thinning and landscape works, including paths, to the Lyme Valley Parkway boundary immediately adjacent to the site; and sums relating to highways and transportation matters of:- £2,245 or such sum as is appropriate, towards Travel Plan monitoring; £50,000 for residential street parking surveys and implementation of car parking zones if deemed appropriate; £10,000 for Real Time Passenger Information displays (and maintenance) at the bus stops on London Road; £5,000 for bus shelter upgrades; and £25,300 towards local cycle network improvements from Newcastle Town Centre to Keele University and the provision of introductory bus passes.

The resolution included the requirement that the agreement should be completed by the 30th September.

There were delays in preparing and circulating a draft agreement. This resulted in the applicant submitting a draft agreement to the Council on the 4th September. This then had to be considered by the Council and your Officer agreed to extend the time period for the completion of the S106 agreement to the 30th October.

The agreement was completed on the 30th October and the decision notice on the application was issued "in time" on the same day.

The decision was issued in this case some 32 weeks after receipt of the application.

(6) Former Ex Serviceman Club, Heathcote Street, Chesterton 17/00417/FUL

This application for full planning permission for the erection of 14 dwellings came before the Planning Committee at its meeting on the 15th August (at around week 10). The resolutions of the Committee inter alia required that obligations securing a review mechanism of the scheme's ability to make a policy compliant financial contributions of £33,244 (index linked) towards the provision of education places and the discounted financial contribution of £23,202 (index linked) to public open space, if the development is not substantially commenced within 12 months from the date of the decision, and the payment of such contributions if found financially viable with preference being given to the making of a policy compliant contribution to the provision of education places first followed by the above contribution to public open space. The resolution included the requirement that the agreement should be completed by the 4th September.

The date for the completion of the Section 106 agreement was always challenging given the timescales but delays on behalf of the applicant in the late stages resulted in the 4th September not being achieved. However, because the agreement was at an advanced stage your Officer agreed to extend the time for the completion of the agreement.

The agreement was completed on the 26th September and the decision notice on the application was issued "in time" on the 28th September.

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

(7) Land south of Market Drayton Road 17/00067/DEEM4

This application, for outline planning permission for the erection of up to 65 dwellings with associated open space and landscaping, came before the Planning Committee on 12th September (at around week 32). The resolution of the Planning Committee included a time limit for the securing, by the 12th November 2017, of a Section 106 agreement providing obligations relating to a management agreement for the long-term maintenance of the open space on the site, a financial contribution of £132,976 towards education places, 25% on site affordable housing, and a financial contribution of £5,579 per dwelling if an equipped play area is not provided on site.

The agreement was not completed by the 12th November following 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 an extension to the period within which the obligations can be completed by – to the 20th December.

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

(8) Land North of Bradwell Hospital 17/00515/DEEM4

This application, for outline planning permission for the erection of up to 85 dwellings, came before the Planning Committee on 10th October 2017 (at around week 16). The resolution of the Planning Committee included a time limit for the securing, by the 11th

November 2017, of an agreement providing obligations relating to on-site affordable housing, and payment of contributions towards public open space and education facilities, and the monitoring of a travel plan.

The agreement was not completed by the 11th November due to delays on behalf of the Council as the Local Planning Authority in circulating a draft agreement. However, a draft S106 agreement has now been sent to the applicant's legal representatives.

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, your Officer has agreed to further extend the period within which the Section 106 agreement may be completed, to the 27th November. This date is also unlikely to be achieved and a further update will be given prior to the committee meeting on the 5th December.

Some 22 weeks have now passed since receipt of the application.

(9) Cartref Rye Hills Audley 17/00503/FUL

This application for full planning permission for the erection a detached dwelling came before the Planning Committee at its meeting on the 10th October (at around week 10). The resolutions of the Committee inter alia required that obligations securing financial contribution of £5,579 towards improvements and maintenance at Wereton Road/Queen Street Play Area, The resolution included the provision that the agreement should be completed by the 21st November.

The S106 was received by the Council prior to the deadline but a further short deadline was required in order for it to be completed and your Officer has agreed to further extend the period within which the Section 106 may be completed, to the 24th November 2017. It is expected that the meeting on the 5th December will be advised that the agreement has been completed and the decision issued.

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

(10) Site of former Baptist Church, London Road, Newcastle 17/00162/FUL

This application for full planning permission for the amendment of a scheme for flats on this site came before the Planning Committee at its meeting on the 12th September (at around week 28). The resolution of the Committee was that subject to

- (a) Your officer determining, on the basis of a new financial assessment by the DVS, that the development still cannot finance all or part of any policy compliant contributions to offsite affordable housing provision and public open space; and
- (b) subject to the applicant entering into a Section 106 obligation by agreement by 30th October, to provide such policy compliant contributions as can be afforded and requiring in the event of substantial commencement of the development (as defined in the previously entered into Section 106 agreement) not being achieved within 18 months of the date of the permission, a financial reappraisal of the scheme to assess its ability at that time to fund full policy compliant contributions to offsite affordable housing provision and public open space, and the making of such contributions as are financially viable

the application (17/00162/FUL) was to be permitted.

The District Valuer's report took significantly longer to obtain than had been anticipated and as a consequence it was not until mid- November that your officer reached a view on the financial position and at that point steps were started to draw up the appropriate agreement. Given that the 30th October date had been passed a new deadline was agreed – of the 13th December.

Some 38 weeks have now passed since receipt of the application.

Date Report prepared

24th November 2017