

## 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 14<sup>th</sup> August 2018 (when the Committee last received a similar report) and the date of the preparation of this report (22<sup>nd</sup> October 2018).

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.

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.

As from the 1<sup>st</sup> June the Service has signed up to a Staffordshire wide initiative to promote the use of a standardised Section 106 template agreement, with template schedules, which is being publicised so applicants are clear what documentation is required of them to complete the application process – with the aim of reducing delays and costs for applicants and to simplify the planning process. It is too soon to know what the effect of this initiative will be.

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) 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 12<sup>th</sup> September 2017 (at around week 32). The resolution of the Planning Committee included a time limit for the securing, by the 12<sup>th</sup> 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 12<sup>th</sup> November 2017 following 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 an extension to the period within which the obligations can be completed by – to the 20<sup>th</sup> December 2017.

There were further long delays on behalf of the applicant and the County Council (as the education authority) and your Officer agreed to further extend the time for the completion of the Section 106 agreement.

The agreement was eventually completed on the 23<sup>rd</sup> August 2018 and the decision notice was issued "out of time" on the 24<sup>th</sup> August.

The decision was issued in this case some 80 weeks after receipt of the application.

#### **(2) Land Bound By Ryecroft, Ryebank, Merrial Street 17/00637/FUL**

This application for full planning permission for demolition of existing buildings and construction of a mixed use development of student accommodation, retail and commercial units and associated car parking originally came before the Planning Committee at its meeting on the 7<sup>th</sup> November 2017 (at around week 15). The resolutions of the Committee inter alia required obligations be entered into securing a financial contributions of; at least £542,797 to public realm improvements with the remainder (being at least £250,000) to be spent on the enhancement of public open space at Brampton Park or Queen Elizabeth Gardens, £2,245 towards travel plan monitoring; Real Time Passenger Information system for bus services; improvements to the cycle route from Newcastle town centre to Keele University; Real Time Town Centre Car Parking Capacity Information System; to review and

provide/amend traffic regulation and 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 requirement that the agreement containing these obligations should be completed by the 8<sup>th</sup> January 2018.

However a further report came back to the Planning Committee on the 2nd February 2018 which set out that it is not legally possible for the Council to enter into an agreement with itself. The Planning Committee then resolved that all parties should enter by 8<sup>th</sup> March 2018 into an Agreement under Section 111 of the Local Government Act 1972, which requires that a draft S106 Agreement (in the terms as per the resolution of Planning Committee on 7<sup>th</sup> November), annexed to the S111 Agreement, is entered into once the transfer of the site has taken place.

The 8<sup>th</sup> March date was not achieved and whilst further delays have occurred your Officer has considered it appropriate to agree further extensions of time within which the Section 111 agreement can be secured, the most recent being to the 25<sup>th</sup> October.

Some 63 weeks have now passed since receipt of the application.

### **(3) Land South of Honeywall Lane 17/00514/OUT**

This application, for outline planning permission for the erection of up to 35 dwellings came before the Planning Committee on 7<sup>th</sup> November (at around week 19). The resolution of the Planning Committee included a time limit for the securing, by the 10<sup>th</sup> December 2017, of planning obligations with respect to the provision of 25% on-site affordable housing and financial contributions towards off-site public open space and primary and secondary school places.

The completion of the Section 106 agreement suffered numerous delays on behalf of the applicant regarding land ownership matters and land registry. These matters were eventually resolved and significant progress was then made in completing the agreement and your Officer agreed to allow a further extension to the deadline for the completion of the agreement to the 13<sup>th</sup> August 2018.

The agreement was eventually completed on the 10<sup>th</sup> August 2018 and the decision notice was issued "out of time" on the 24<sup>th</sup> August.

The decision was issued in this case some 59 weeks after receipt of the application.

### **(4) 24 Greenock Close, Newcastle-under-Lyme 17/01015/OUT**

This application for outline planning permission for the erection of two detached dwellings came before the Planning Committee at its meeting on the 27<sup>th</sup> March (at around week 14). The resolutions of the Committee inter alia required that an obligation to secure a financial contribution of £5,579 per dwelling towards the maintenance and improvement of public open space. The resolution included the requirement that the agreement should be completed by the 20<sup>th</sup> April.

The agreement was not completed by the 20<sup>th</sup> April due to delays on behalf of both the Council and the applicant and your officer has agreed further extensions of time with the latest being to the 5<sup>th</sup> November.

Significant progress has now been made and it is hoped that the matter will be concluded by the time of the committee meeting and a further update will be able to be given prior to the committee.

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

### **(5) The Former Orme Centre, Orme Road, Newcastle 18/00090/FUL**

This application for the variation of Condition 5 (the condition listing the approved plans) of planning permission 16/00796/OUT came before the Planning Committee at its meeting on the 24<sup>th</sup> May (at around week 5). The resolutions of the Committee required obligations securing should there be no substantial commencement by a specified date 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 29<sup>th</sup> June.

The applicant has now decided to withdraw the application following a further full planning application (18/00183/FUL) for the conversion of the former Orme Centre/School and the erection of a new building to provide 112 bed student accommodation, which was the subject of a resolution that planning permission can be granted subject to the prior completion of a Section 106 agreement..

#### **(6) 1 Inglewood Drive Porthill 18/00162/FUL**

This application for the conversion of a single house into four apartments came before the Planning Committee at its meeting on the 24<sup>th</sup> May (at around week 12). The resolution of the Committee required an obligation securing, should there be no substantial commencement by a specified date, a review of the financial position and if viable payment of a financial contribution of £14,799 towards public open space provision. The resolution included the provision that the obligation should be completed by a period to be set by the Head of Planning. This was subsequently set as the 29<sup>th</sup> August.

There were delays on behalf of the Council regarding financial viability but the obligation was eventually completed on the 18<sup>th</sup> September and the decision notice was issued "out of time" on the 3<sup>rd</sup> October.

The decision was issued in this case some 31 weeks after receipt of the application.

#### **(7) Land NE of Eccleshall Rd, SE of Pinewood Rd, and NW of Lower Rd, Hookgate 17/01001/FUL**

This application for full planning permission for the erection of 22 houses and bungalows came before the Planning Committee at its meeting of the 17<sup>th</sup> July (at around week 27). The resolution of the Planning Committee included a time limit for the securing, by the 28<sup>th</sup> August, of planning obligations with respect to the provision of financial contributions of £44,950 towards off-site public open space and £18,550 towards secondary school places, 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 12 months of the grant of planning permission.

The agreement was not completed by the 28<sup>th</sup> August due to delays on behalf of both the Council and the applicant. The agreement however was eventually completed on the 26<sup>th</sup> September, within an agreed extended period, and a decision will be issued once planning conditions have been agreed with the applicant.

Some 41 weeks have now passed since receipt of the application.

#### **(8) Land South of Muckleston Rd 18/00314/FUL**

This application for full planning permission for the erection of five residential dwellings came before the Planning Committee at its meeting on the 14<sup>th</sup> August (at around week 16). The resolutions of the Committee required obligations securing a mechanism that preserves the Council's position in respect of obligations secured prior to the grant of permission 15/00202/OUT.

The resolution included the provision that the agreement should be completed by the 14<sup>th</sup> September.

An agreement has been in circulation for a number of weeks and by virtue of the steady progress made your officer, and the existence of the extant outline planning permission, has agreed an extension of time by which the Section 106 should be completed to the 26<sup>th</sup> October.

Some 25 weeks have now passed since receipt of the application

Date Report prepared

22<sup>nd</sup> October 2018