

## 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 6<sup>th</sup> November 2018 (when the Committee last received a similar report) and the date of the preparation of this report (18<sup>th</sup> January 2019).

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 10 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. Indeed it can be in their interests to delay matters in some cases, particularly where the Council has agreed to accept less than policy compliant contributions on the basis of a Viability appraisal. 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 2018 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 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 8<sup>th</sup> February 2019. The delay is currently primarily as a result of the position of the County Council who have to be party to the agreement.

Some 75 weeks have now passed since receipt of the application.

#### **(2) 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. A number of extensions of time were therefore agreed by your officer with the latest being to the 9<sup>th</sup> November.

The agreement was completed on the 5<sup>th</sup> November 2018 and the decision notice was issued "out of time" on the 23<sup>rd</sup> November.

The decision was issued in this case some 46 weeks after receipt of the application.

### **(3) 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.

In that an agreement had been in circulation for a number of weeks and by virtue of the steady progress made your Officer agreed to a couple of extensions to the time period within which it had to be completed.

The agreement was eventually completed on the 8<sup>th</sup> November 2018 and the decision notice was issued "out of time" on the 13<sup>th</sup> November.

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

### **(4) Land at West Avenue, Kidsgrove 18/00239/FUL**

This application for full planning permission for the erection of 63 dwellings came before the Planning Committee at its meeting on the 11<sup>th</sup> September (at around week 20). The resolution of the Committee required an obligation to secure a review mechanism of the scheme's ability to make a policy compliant contribution 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 a contribution if found financially viable, and to require a further viability appraisal to be undertaken if the development as constructed is not 100% affordable housing and the payment of a policy compliant contribution if found financially viable. The resolution included the requirement that the agreement should be completed by the 9<sup>th</sup> November.

The agreement was not completed by the 9<sup>th</sup> November due to delays on behalf of the applicant, which continue to occur. The application is the subject of a financial viability appraisal report, the conclusions of which are becoming less reliable the longer the period is since the appraisal was undertaken. Therefore your Officer only considers it reasonable and appropriate to agree a short extension of time for the completion of the S106 to the 6<sup>th</sup> February 2019.

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

### **(5) Orme Centre, Orme Road, Newcastle 18/00183/FUL**

This application for full planning permission the conversion of the former Orme Centre/School and the erection of a new building to provide 112 bed student accommodation came before the Planning Committee at its meeting on the 11<sup>th</sup> September (at around week 20). The

resolution of the Planning Committee included a time limit for the securing, by the 12<sup>th</sup> November, of obligations relating to financial contribution of £124,560 towards public open space, £2,200 towards travel plan monitoring and £50,000 to fund both before and after parking surveys and a Resident Parking Zone in the event that it has been demonstrated by those surveys that the development has resulted in on street parking problems.

The agreement was not completed by the 12<sup>th</sup> November due to delays on both sides but more recently on behalf of the Council. In this case your officer has agreed an extension of time by which the Section 106 should be completed to the 22<sup>nd</sup> January 2019. Whilst progress is now being made it would appear unlikely that the 22<sup>nd</sup> January date will be met and if that is so an update will be provided

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

**(6) Land adj 45 Moran Road, Knutton 18/00465/FUL**

This application for full planning permission for the construction of two flats came before the Planning Committee at its meeting on the 11<sup>th</sup> September (at around week 11). The resolutions of the Committee inter alia required that an obligation to secure a financial contribution of £9,866 towards the maintenance and improvement of public open space. The resolution included the requirement that the agreement should be completed by the 9<sup>th</sup> November.

The agreement was not completed by the 9<sup>th</sup> November because the applicant subsequently advised that they wished to demonstrate that the scheme is financially unviable with the requested financial contribution towards public open space and that they were prepared to pay for an appraisal. In the circumstances it was considered appropriate to allow time for that appraisal and the result of that is the subject of a report elsewhere on this agenda.

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

**(7) Former Garage, Cemetery Road, Silverdale 18/00293/OUT**

This application for outline planning permission for 38 residential units came before the Planning Committee at its meeting on the 9<sup>th</sup> October (at around week 15). 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 and 25% on site affordable housing. The resolution included the requirement that the agreement should be completed by the 21<sup>st</sup> November.

The agreement was not completed by the 21<sup>st</sup> November due to a lack of information being received from the applicant. That information still has not been received. Your Officer has written to the applicant indicating that he is presently minded not to agree to any further extension beyond the 28<sup>th</sup> January, and instead to refuse the application. An update on this case will be provided to the Committee

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

**(8) Former Halmerend Working Mens Club 18/00329/FUL**

This application for full planning permission for a residential development of 7 dwellings came before the Planning Committee at its meeting on the 9<sup>th</sup> October (at around week 23). 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 £39,053 towards public open space provision. The resolution included the requirement that the agreement should be completed by the 20<sup>th</sup> November.

The agreement was not completed by the 20<sup>th</sup> November and delays on behalf of the applicant regarding land ownership matters continue to delay progress. Your Officer has

recently agreed to allow a further extension to the deadline for the completion of the agreement - to the 21<sup>st</sup> February 2019.

Some 37 weeks have now passed since receipt of the application.

**(9) Land Off Sandford Street, Chesterton 18/00559/FUL**

This application for full planning permission for a building comprising 10 two bedroom self-contained flats came before the Planning Committee at its meeting on the 6<sup>th</sup> November (at around week 16). 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 £33,244 towards public open space provision. The resolution included the requirement that the agreement should be completed by the 13<sup>th</sup> December.

The agreement was not completed by the 13<sup>th</sup> December due to delays on behalf the Council in preparing the draft agreement. Some progress has now been made and taking into account that the delay has been on behalf of the Council your Officer has agreed an extension of time by which the Section 106 should be completed to the 15<sup>th</sup> February 2019.

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

**(10) 121 - 123 High Street Wolstanton 18/00467/FUL**

This application for full planning permission for the change of use of the first and second floor offices into 4 self-contained apartments came before the Planning Committee at its meeting on the 6<sup>th</sup> November (at around week 15). 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 £19,732 towards public open space provision. The resolution included the requirement that the agreement should be completed by the 6<sup>th</sup> December.

The agreement was not completed by the 6<sup>th</sup> December due to delays on behalf the Council in preparing the draft agreement. Some progress has now been made and on the basis that the delay has been on behalf of the Council your Officer has agreed an extension of time by which the Section 106 should be completed to the 25<sup>th</sup> January 2019.

Some 24 weeks have now passed since receipt of the application.

Date Report prepared

16<sup>th</sup> January 2019