

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 29th January 2019 (when the Committee last received a similar report) and the date of the preparation of this report (4th April 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 in 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 1st 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.

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. Milestones are now being set in some cases. 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 7th 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 8th 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 8th 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 7th November), annexed to the S111 Agreement, is entered into once the transfer of the site has taken place.

The 8th March 2018 date was not achieved and whilst further ongoing 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 1st July 2019. The delay is currently primarily as a result of the position of the County Council who have to be party to the agreement. There is now an expectation that there will be some progress in that respect.

Some 86 weeks have now passed since receipt of the application.

(2) 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 11th 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 9th November.

The agreement was not completed by the 9th November due to delays on behalf of the applicant; however the applicant has now made some progress. 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 further short extension of time for the completion of the S106 to the 2nd May 2019.

Some 51 weeks have now passed since receipt of the application.

3) 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 11th September 2018 (at around week 20). The resolution of the Planning Committee included a time limit for the securing, by the 12th 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 12th November due to delays on both sides and further delays were encountered which meant that your Officer agreed various extensions of time by which the Section 106 should be completed with the latest being to the 4th March 2019. The agreement was completed on the 4th March and the decision was issued 'in time' on the 5th March

The decision was issued in this case some 45 weeks after receipt of the application.

(4) 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 9th October 2018 (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 21st November.

The agreement was not completed by the 21st November due to a lack of information being received from the applicant and delays have continued for sometime, with eventually the other party appointing solicitors. Your Officer in deciding to grant a short extension until the 25th February took into account some personal circumstances of the applicant and also required the applicant to meet certain interim milestones. Some progress was made and a further extension then granted until 8th April again with a requirement that the applicant meet certain milestones. Subsequent delays on the LPA solicitors side have resulted in that date not being achieved, but draft agreement is now with the applicant. Your Officer has agreed a further extension of time by which the Section 106 should be completed by to the 30th April, again with an additional milestone. An update on this case may need to be provided to the Committee

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

(5) 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 6th 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 13th December.

The agreement was not completed by the 13th December due to delays on behalf of the Council in preparing the draft agreement. A couple of extensions were agreed. Further delays were encountered but the agreement was eventually completed on the 28th February, after a further short extension having been agreed to the 1st March, and a decision notice was then issued 'out of time' on the 8th March 2019.

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

(6) Former Bristol Street Motors, London Road 16/01106/FUL

This application for full planning permission for 499 studio apartments for student occupation was permitted in October 2017 with a completed S106 agreement, which secured a number of financial contributions. The developer has subsequently submitted a request to vary the current terms of the section 106 agreement and a report came before the 3rd January 2019 planning committee. The resolution of the Committee was to agree to amend the existing Section 106 agreement so that it requires contributions totalling £300,000 (index linked as from October 2017) unless substantial commencement is not achieved by the 3rd January 2020 and then a review of the financial position will then be required. The resolution included the requirement that the agreement should be completed by the 3rd March.

A draft Deed of Variation (DOV) has been in circulation for a number of weeks and whilst a number of delays have been encountered by all parties it is now nearing completion and on this basis your Officer has agreed an extension of time for the completion of the DOV to the 26th April.

(7) Sites of Horwood, Lindsay and Barnes Halls, Keele University 18/00698/FUL

This application for full planning permission for the demolition of 732 student bed-spaces and the erection of twenty new buildings to provide 1,685 student bedrooms (1,706 student bed-spaces) and social hub at Horwood and Lindsay Halls and the provision of car parking at Barnes and Horwood Halls, came before the Planning Committee at its meeting on the 3rd January (at around week 17). The resolution of the Planning Committee included a time limit for the securing, by the 14th February, of obligations relating to financial contribution towards travel plan monitoring (£2,360), the provision of real-time travel information (£15,000), and a Toucan signal controlled crossing on Cemetery Road (£39,000).

The agreement was not completed by the 14th February due to delays primarily on behalf of the Council which meant that your officer agreed various extensions of time by which the Section 106 should be completed with the latest being to the 29th April 2019. It is expected that a supplementary report may need to be provided to the committee on this case

Some 30 weeks have now passed since receipt of the application.

(8) Orchard House, Clayton Road 18/00693/FUL

This application for full planning permission for specialist accommodation for the elderly comprising 75 residential apartments with care, communal facilities, parking and associated private amenity space for persons aged 55 and over came before the

Planning Committee at its meeting on the 3rd January (at around week 17). The resolution of the Planning Committee included a time limit for the securing, by the 20th February, of obligations restricting the occupancy of the accommodation so that it falls within the C2 Use Class and financial contributions of £130,203 (index linked) towards the maintenance and improvement of public open space at Lyme Valley Parkway and travel plan monitoring fee of £2,360 (index linked).

The agreement was not completed by the 20th February due to delays primarily on behalf of the Council which meant that your officer agreed various extensions of time by which the Section 106 should be completed with the latest being to the 13th March 2019.

Further delays were encountered but the agreement was eventually completed on the 25th March and a decision noticed issued 'out of time' on the 28th March 2019.

The decision was issued in this case some 29 weeks after receipt of the application.

(9) Former Savoy Cinema/Metropolis Nightclub 18/00483/FUL

This application for full planning permission planning permission for the erection of a part 9, part 12 storey building to provide 211 rooms of student accommodation came before the Planning Committee at its meeting on the 3rd January (at around week 25). The resolution of the Planning Committee included a time limit for the securing, by the 14th February, of obligations relating to financial contribution of £2,200 towards travel plan monitoring, £22,200 towards the enhancement of public open space, £8,000 towards the ongoing maintenance of the Real Time Passenger Information system for bus services, £10,600 towards improvements to the cycle route from Newcastle town centre to Keele University, £11,000 towards public realm improvements, a free bus pass to each student for travel to the Campus at Keele University, Staffordshire University, Stoke-on-Trent College or the Royal Stoke University Hospital and a review mechanism of the scheme's ability to make a more or fully 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 then found financially viable.

The agreement was not completed by the 14th February due to delays on both sides but steady progress was being made and your officer agreed various extensions of time by which the Section 106 should be completed with the latest being to the 13th March 2019.

The agreement was eventually completed on the 14th March and a decision noticed was issued 'in time' on the same day.

The decision was issued in this case some 35 weeks after receipt of the application.

(10) Chatterley Valley 18/00736/OUT

This hybrid planning application for full planning permission for earthworks associated with the creation of development plateaus, access roads and associated works; and outline planning permission for development of buildings falling within Use Classes B1b (research and development), B1c (light industry), B2 (general industrial) and B8 (storage and distribution), and ancillary A3 (Restaurants and cafes) and A5 (hot food takeaways) uses came before the Planning Committee at its meeting on the 29th January (at around week 19). The resolution of the Planning Committee included a time limit for the securing, by the 29th March, of obligations relating to financial contribution towards a Travel Plan monitoring fee of £11,325 and a payment of £5,000 for amendments to the existing Travel Regulation Order.

The agreement was not completed by the 29th March due to delays on behalf of the Council. On this basis, your officer has agreed an extension of time by which the Section 106 should be completed by. An update may need to be provided to the meeting. Some 28 weeks have now passed since receipt of the application.

Date Report prepared

10th April 2019