

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 23rd April 2019 (when the Committee last received a similar report) and the date of the preparation of this report (31st July 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 11 applications. In one case (item 2) below the decision was made not to agree to further time and a decision notice of refusal was issued.

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 Rycroft, 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 on the 6th July to the 7th October 2019. The delay is currently primarily as a result of the position of the County Council who have to be party to the agreement but documents are being drafted and circulated with the expectation that progress will be made.

Some 101 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 which continued. Your Officer having agreed various extensions, on the 9th May, due to the limited progress having been made and the lack of commitment from the applicant to conclude an agreement, considered it necessary to refuse the planning application on the grounds that in the absence of a secured planning obligation there is not an appropriate mechanism to secure a review of financial viability to allow for the possibility of a financial contribution towards capital development/improvement of offsite open space should the development not proceed promptly or if the development as constructed is not 100% affordable housing, and financial circumstances change and, the potential provision of policy compliant financial contributions towards public open space is not then achieved.

The decision was issued in this case some 55 weeks after receipt of the application – it was 'out of time'.

(3) 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 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.

Whilst a Deed of Variation has been entered into by the developer and the County Council, it does not meet the terms of the resolution of the Planning Committee and is not acceptable to the Borough Council. Whilst the development is proceeding the Borough Council's position in terms of the Section 106 is protected, and the developer is aware of the concerns. Your Officer has recently agreed to extend the period within which the Deed of Variation can be completed to the 14th August, being satisfied that the developer wishes to complete and that there has been no material change in planning circumstances in the interim.

(4) 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 last one being to the 19th July.

The agreement was eventually completed on the 18th July and a decision notice was then issued 'in time' on the 22nd July 2019.

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

(5) 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.

The agreement was eventually completed on the 11th June 2019 and a decision notice was then issued 'out of time' on the 5th July 2019.

The decision was issued in this case some 40 weeks after receipt of the application.

(6) The Brighton, Silverdale 18/00714/FUL

This application for full planning permission for the change of use and refurbishment of former care home (C2) into apartments (C3) for over 55s independent living - 16 new one beds and 3 two bed apartments came before the Planning Committee at its meeting on the 26th March (at around week 15). 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. The resolution included the requirement that the agreement should be completed by the 1st May 2019.

The agreement was not completed by the 1st May due to a number of delays on behalf of the Council which meant that your officer agreed extensions of time by which the Section 106 should be completed with the latest being to the 6th August 2019. An update on this case may need to be provided to the Committee.

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

(7) Bursley Primary School 18/00990/FUL

This application for full planning permission for an extension to the school came before the Planning Committee at its meeting on the 26th March (at around week 15). The resolution of the Committee required an obligation to secure a financial contribution of £5,000 for the preparation and monitoring of a Mode Shift Stars scheme to promote and encourage sustainable access to the school. The resolution included the requirement that the agreement should be completed by the 26th April 2019.

The agreement was not completed by the 26th April due to a number of delays on behalf of the Council. The applicant has decided to proceed with a unilateral undertaking (UU) and your officer has agreed extensions of time by which it should be completed with the latest being to the 9th August. Completion of the UU is imminent at the time of writing. An update on this case is expected to be provided to the Committee.

Some 29 weeks have now passed since receipt of the application

(8) Plot 3 of the Science & Innovation Park, Keele Road 18/01011/FUL

This application for full planning permission for a new veterinary training school incorporating a specialist veterinary referral hospital came before the Planning Committee at its meeting on the 23rd April (at around week 18). The resolution of the Committee required an obligation to secure a financial contribution of £2,360 towards travel plan monitoring. The resolution included the requirement that the obligation should be completed by the 21st May.

The agreement was not completed by the 21st May due to a number of delays on behalf of both the applicant and the Council, which primarily related to discussions about whether the travel plan monitoring fee could be secured by undertaking rather than by an agreement. The applicant decided to proceed with a unilateral undertaking (UU) and your officer agreed extensions of time by which it should be completed with the latest being to the 5th July 2019.

The UU was completed on the 4th July and the decision notice was issued 'in time' on the 11th July 2019.

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

(9) Land at New Road, Madeley 19/00036/FUL

This application for full planning permission for the erection of 32 dwellings came before the Planning Committee at its meeting on the 23rd April (at around week 14). The resolution of the Committee required an obligation to secure 25% onsite affordable housing and financial contributions towards public open space (£178,528) and secondary school education places (£66,488). The resolution included the requirement that the agreement should be completed by the 31st May.

The agreement was not completed by the 31st May due to a number of delays on behalf of the Council which meant that your officer agreed extensions of time by which the Section 106 should be completed with the latest being to the 7th August 2019. The agreement has now reached engrossment stage and should be completed prior to the committee meeting. An update on this case is likely to be provided to the Committee.

Some 27 weeks have now passed since receipt of the application

(10) 4 Meadows Road Kidsgrove 18/00889/FUL

This application for full planning permission for the change of use from warehouse (Class B8) and taxi base (sui generis) to a Working Men's Club (use class D2) came before the Planning Committee at its meeting on the 21st May (at around week 27). The resolution of the Committee required an obligation to secure the financing of improved glazing provision to any properties which would be materially impacted by the development. The resolution included the requirement that the agreement should be completed by the 28th June.

The agreement was not completed by the 28th June due to a number of delays on behalf of the Council which meant that your Officer has recently agreed an extension of time by which the Section 106 should be completed to the 14th August 2019.

Some 37 weeks have now passed since receipt of the application

(11) Kidsgrove WMC Hardingswood Road Kidsgrove 18/00916/FUL

This application for full planning permission for the demolition of existing buildings and construction of retail store (2,206sqm GEA) (Use Class A1) came before the Planning Committee at its meeting on the 21st May (at around week 27). The resolution of the Committee required an obligation to secure a travel plan monitoring fee of £2,407 and a financial contribution of £10,000 for the provision of signal controlled pedestrian crossing

facilities on the A50 Liverpool Road. The resolution included the requirement that the agreement should be completed by the 28th June.

The agreement was not completed by the 28th June due to a number of delays on behalf of the Council which meant that your officer has agreed an extension of time by which the Section 106 should be completed to the 14th August 2019.

Some 37 weeks have now passed since receipt of the application

(12) Chesterton Community Sports College, Chesterton 18/00949/FUL

This application for full planning permission for the erection of a new mobile class room came before the Planning Committee at its meeting on 26th March (at around week 17). The resolution of the Committee required an obligation to secure by the 26th April a financial contribution of £5,000 for the preparation and monitoring of a Mode Shift Stars scheme to promote and encourage sustainable access to the school. The 26th April passed without this obligation being secured and your Officer agreed further extensions including one to the 24th June.

On the 8th July the application was withdrawn

Date Report prepared

31st July 2019