

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 13th August 2019 (when the Committee last received a similar report) and the date of the preparation of this report (20th December 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 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. 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. However, it would now appear that the applicant does not wish to progress this matter and clarification is now being sought in this regard.

Some 121 weeks have now passed since receipt of the application.

(2) 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.

There have been numerous complications in securing this deed of variation and limited progress was made in more recent months due to delays on behalf of the Council. In light of this your Officer agreed to extend the period within which the Deed of Variation (DoV) can be completed to the 20th December and the DoV was completed on the 18th December.

The DoV was completed some 53 weeks after receipt of the application.

(3) 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, the latest being to the 20th December 2019. The agreement was completed on the 19th December and the decision notice was issued on the 20th December 2019.

The decision was issued in this case some 53 weeks after receipt of the application.

(4) 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 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 9th August.

The UU was eventually completed on the 9th August and the decision notice was issued on the 22nd August 2019.

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

(5) 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 5th September 2019.

The agreement was finally completed on the 3rd September and the decision notice was issued 'in time' on the 4th September 2019.

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

(6) 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 agreed an extension of time by which the Section 106 should be completed.

In preparing the obligation it has become apparent that the development could not be made acceptable through a planning obligation to finance the provision of improved circumstances. The concern is that the obligation would not make the development acceptable in planning terms as any sum of money obtained to fund mitigation measures, as may be required, does not guarantee that the measures would be implemented as the owner of the adjoining the Meadows, Aspire, is under no obligation to undertake the required mitigation not being a part to the obligation (and could not be a party as they do not have an interest in the application site).

The applicant has been advised that if Aspire were prepared to give an informal undertaking to the Council that they would implement any required mitigation measures a negatively worded obligation that prevents the commencement of the use of the premises as a Working Men's Club until the mitigation measures are in place or, at the very least, the funds to implement the mitigation measures are provided to the LPA before the use commences may be acceptable. At this point in time no progress has been made towards completing such an obligation and clarification is being sought from the applicant in this regard.

Some 57 weeks have now passed since receipt of the application

(7) 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. Considerable progress has recently been made, however, and it is anticipated that it will be completed in the New Year. In light of this your officer agreed an extension of time by which the Section 106 until 31st January 2020.

Some 57 weeks have now passed since receipt of the application

(8) Land South of Mucklestone Road, Loggerheads 19/00409/FUL

This application is for full planning permission to vary condition 2 of planning permission 18/00314/FUL which granted consent for the erection of five residential dwellings, access and associated works. The application came before the Planning Committee at its meeting on the 16th July (at around week 7). The resolution of the Committee required a Deed of Variation (DoV) which preserves the Council's position in respect of obligations secured prior to the grant of permission 18/00314/FUL. The resolution included the requirement that the DoV should be completed by the 16th August.

The agreement was not completed by the 16th August due to a number of delays which meant that your officer agreed a number of extensions of time by which the DoV should be completed with the latest being to the 20th September 2019.

The DoV was eventually completed on the 31st October and the decision notice was issued 'in time' on the 12th November 2019.

The decision was issued in this case some 24 weeks after receipt of the application.

Date Report prepared

20th December 2019