

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 9th November 2021 (when the Committee last received a similar report) and the date of the preparation of this report (14th April).

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 3 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 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) Tadgedale Quarry, Mucklestone Road, Loggerheads 21/00536/FUL

The application seeks to vary conditions 20 and 21 of planning permission 15/00015/OUT, which granted consent for the erection of up to 128 dwellings came before the Planning Committee at its meeting on the 20th July (at around week 7). The resolution of the Committee required an obligation that preserves the Council's position in respect of obligations which secured provisions relating to affordable housing, open space, education, and sustainable transport, prior to the grant of permission 15/00015/OUT. The resolution included the requirement that the Deed of Variation (DoV) should be completed by the 20th August 2021.

A DoV was not completed by the 20th August and whilst there have been delays on behalf of all parties, steady progress has been made and a draft has been in circulation for a number of weeks. Your Officer has recently agreed to extend the period by which the DoV should be completed by to the 6th May 2022.

Some 44 weeks have now passed since receipt of the application.

(2) Land NE Eccleshall Rd SE Pinewood Rd NW Lower Rd 21/00393/FUL

This application for full planning permission for a residential development of 22 dwellings came before the Planning Committee at its meeting on the 7th December (at around week 21). The resolution of the Committee required an obligation to secure financial contributions of £80,562 towards public open space and £33,244 towards secondary school education places. The resolution included the requirement that the agreement should be completed by the 28th January 2022.

The agreement was not completed by the 28th January due delays related to land ownership. A draft agreement is now in circulation and your officer has recently agreed to extend the period by which the Obligation should be completed by to the 6th May 2022.

Some 46 weeks have now passed since receipt of the application.

(3) Former Newcastle Library 21/00903/FUL

This application for full planning permission for the partial demolition, extension and change of use of the former library building to provide 36 no. apartments came before the Planning Committee at its meeting on the 1st February (at around week 19). The resolution of the

Committee required an obligation to secure a review mechanism of the scheme's ability to make a more or fully policy compliant financial contribution towards public open space/ public realm and/ or the provision of affordable housing, if the development is not substantially commenced within 12 months from the date of the decision, and the provision of such affordable housing and payment of an appropriate financial contribution, if then found financially viable. The resolution included the requirement that the agreement should be completed by the 11th March 2022.

The agreement was not completed by the 11th March but it has been at an advanced stage for a number of weeks. Delays on behalf of the Council have been encountered. Therefore, your officer has agreed to extend the period by which the Obligation should be completed by to the 18th April 2022.

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

Date Report prepared

14th April 2022