

STRATEGIC PLANNING BOARD

Date of meeting: 3 March 2010
Report of: Julie Openshaw – Legal Team Manager (Places
Regulatory and Compliance
Philippa Lowe – Development Manager
Title: Reporting on Planning Obligations and Lawful
Development Certificates.

1.0 Purpose of Report

- 1.1 To provide an update on work being carried out jointly between Development Management and Legal Services on improving performance in relation to Planning Obligations and Lawful Development Certificates. Table 1 details the programme of improvement work and current status. Table 2 provides example of proposed format for reporting progress and completion of work.

2.0 Background

- 2.1 At the meeting of the Strategic Planning Board on 23 December 2009, the overall Performance Management Framework for the Development Management service, which set out the mechanism for reporting on performance together with specific reports regarding Enforcement and Appeals, was approved by members.
- 2.2 This report deals with the most appropriate feedback to Members on elements of the service with an input from Legal Services in particular in relation to Section 106 Agreements and Unilateral Undertakings, but also with reference to work undertaken on Lawful Development Certificates.

3.0 Current Position

- 3.1 Members will be aware of the ongoing projects which form part of the transformation of the Development Management Service and the associated review of working practices and procedures from the legacy authorities.
- 3.2 The Performance Management Framework report of 23 December 2009, referred to work which was being carried out to establish a full data set of outstanding Obligations awaiting completion. That exercise

established that at that time there were approximately 78 currently outstanding Section 106 Agreements.

- 3.3 Maintenance of the list is work in progress, and the list will be refined and updated on a regular basis as cases move through the process. Each case has also been allocated a priority, and these figures will also be regularly reviewed and if necessary amended.
- 3.4 In order to improve efficiency in the processing of applications including lawful development certificates and those requiring S106 planning obligations, an Improvement Plan has been commenced and a summary is set out in Table 1. This will contribute towards compliance with target deadlines and establish best practice for future work.

4.0 “Finally Disposed of”

- 4.1 As well as monitoring and prioritising current applications, there is an expectation that planning applications in general should be determined in a timely fashion, as no purpose is served by applications remaining “live” on the register when there is no prospect of the development proceeding, or of the planning obligation being entered into to secure those matters which are considered necessary to mitigate the impact of the development or other outstanding issues resolved.
- 4.2 There may be a number of reasons why a development does not proceed, not all of which are in the applicant’s control, nor indeed within the control of the planning authority. However, having matters outstanding on the register for a protracted period of time can also lead to uncertainty.
- 4.3 The General Development Procedure Order 1995, as amended, provides detail about how planning applications are to be processed, and time periods for decisions on both major and non-major applications.
- 4.4 Under Article 25 of the Order, the Statutory Register which the planning authority must maintain is divided into two parts. Part I deals with current applications, and Part II covers historic applications. Part I covers applications which are “not finally disposed of” (Article 25(3)). Article 25 (11) sets out criteria for determining whether an application is “finally disposed of”. Of several options, only sub-paragraph (a) is relevant for current purposes, and this states: “(a) it has been decided by the authority (or the appropriate period allowed under Article 20(2) of this Order has expired without their giving a decision) and the period of six months specified in Article 23 of this Order has expired without any appeal having been made to the Secretary of State.”
- 4.5 Article 20(2) provides that the time period for decision (or longer period as may have been agreed in writing between the applicant and the local planning authority) is thirteen weeks from receipt for major development applications, and eight weeks for non-major applications,

while Article 23 deals with the period for lodging of an appeal. (In this sense, decision is taken to refer to the provision of a decision notice, not a resolution to do so, subject to a planning obligation being entered into). At the end of such periods where no decision or appeal has been made, an application can thus be transferred from Part I to Part II of the Register as “finally disposed of”.

- 4.6 Work is ongoing to identify cases in which this period has now expired and no appeal has been lodged with the Secretary of State. The function of determining applications as “finally disposed of” is delegated to the Head of Policy and Planning. Reports will be brought to the Strategic Planning Board or if necessary the Committee which made the original determination, listing cases where this course of action is proposed, to give members the opportunity to make observations before the determinations are made.

5.0 Proposal

- 5.1 It is proposed to report performance in tabular format (see Table 2 for examples) on a quarterly basis to Strategic Planning Board and to liaise with and provide updates to the Portfolio Holder and Executive Steering Group for Transformation Project.

6.0 Recommendation

- 6.1 That members receive this report and programme of work set out in Table 1 and also confirm the proposed future reporting procedures as set out in Table 2.

For further information:

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PERFORMANCE IMPROVEMENT PLAN FOR CASE MANAGEMENT

TABLE 1

ACTION	RESPONSIBILITY	DEADLINE
1. PRE-APPLICATION STAGE:		
▪ Identify and agree Heads of Terms	Planning (with advice from Legal as requested)	September 2010
▪ Produce set of Standard Clauses / templates for Agreements for publication and inclusion on website	Legal	September 2010
▪ Produce guidance for developers to be included on website regarding information and details required from developers including: Contact details and where possible Solicitors to be instructed; evidence of title; RSL where applicable; other parties; any deadlines for developers e.g. funding deadlines; undertaking as to payment of the Council's fees and charges	Legal (with input from Planning)	September 2010
2. VALIDATION STAGE:		
▪ Ensure consistent approach	Planning	On-going
▪ Review existing local list	Planning	September 2010
▪ Establish potential for use of Planning Performance Agreements for Major Applications requiring a Section 106 Agreement	Legal and Planning	April 2010
3. APPLICATION STAGE:		
▪ Planning system to record need for Section 106 Agreement	Planning	September 2010
▪ Full Instructions to Legal, in standard format, forwarded as soon as Planning is in possession of this information	Planning	September 2010
▪ Standard Instructions template sheet to be agreed for use in all future cases – to include priority to be given to the matter, with	Legal to confirm final draft, Planning to agree	September 2010

reasons and having regard to available resources and any factors outside the Council's control		
▪ Legal services consulted on submitted draft Heads of Terms	Planning	September 2010
▪ Negotiate any further revisions to Heads of Terms	Planning (with Legal advice if requested)	September 2010
▪ Draft version of S106 Agreement and set of conditions prepared	Agreement - Legal Conditions - Planning	September 2010
▪ Consideration to be given to Board/Committee report to have standard template wording resolution	Planning (with Legal advice)	September 2010
4. MANAGEMENT OF ON-GOING SECTION 106 AGREEMENTS:		
▪ Review priorities for all existing cases on list and advise Legal Team Leader of any revisions to current categories	Planning	April 2010
▪ Re-order list to show most urgent cases first	Planning	Completed on 5 February 2010
▪ Check cases suitable for "finally disposed of" letter to go to developers	Planning and Legal	31 March 2010
▪ Create standard initial letter to developers for future new applications outlining possible "finally disposed of" procedure where agreements are not completed within specified time	Legal to draft letter, Planning to agree	31 March 2010
5. PERFORMANCE MANAGEMENT:		
▪ Quarterly reporting on performance to Strategic Planning Board on new cases and completed Agreements	Planning and Legal	Relevant committee dates
▪ Database to be maintained, prioritised and potential cases to be 'finally disposed of' to be identified	Planning and Legal	Ongoing
▪ Regular liaison with and updates to Portfolio Holder and Executive Steering Group for Transformation Project on S106 database and Unilateral Undertakings	Planning	To be arranged as agreed

6. CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT (CLEUD) AND CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT (CLOPUD).		
▪ Produce guidance note on consideration and processing of Certificates	Legal	31 March 2010
▪ Review consultation process and letters including protocol for involving Legal Services	Planning and Legal	31 March 2010
▪ Prepare standard delegated report	Planning (Legal to advise if requested)	31 March 2010
▪ Report performance on quarterly basis to Strategic Planning Board	Planning	Quarterly

TABLE 2

PROGRESS INFORMATION FOR CHESHIRE EAST DEVELOPMENT MANAGEMENT SERVICE

1. Section 106 Agreements.

1a) New Instructions to Legal Services for S106 Agreements

Planning ref	Address	Development	Date of Application	Date of Instructions Quarter 4 (Jan – Mar 2010)
09/3016C	Mossley House, Congleton	Demolition of Mossley House and redevelopment inc care home.		18/02/2010
09/1685M	Mobberley Riding School	App to discharge sec 52 agreement		Dec 09/Jan10
09/3549M	Mere Golf Club	Variation of condition 08/1263P		12/01/2010
Totals by quarter				

1b) Completed S106 Agreements

Planning ref	Address	Development	Date of Decision Notice	Date of Completion Quarter 4 (Jan – Mar 2010)
09/1160M	Land at Brook Street, Knutsford	S106 Aldi, Knutsford	29/01/2010	
P08/0869	Hankelow Hall, Hankelow	Four detached dwellings	05/02/2010	
P09/0007	Hankelow Hall, Hankelow	Detached dwelling	05/02/2010	
Totals by quarter				

TABLE 2 Cont.

2. Certificate of Lawfulness of Existing Use or Development (CLEUD) and Certificate of Lawfulness of Proposed Use or Development (CLOPUD).

2a) Instructions to Legal Services to advise on CLEUD or CLOPUD

Planning ref	Address	Development	Date Application Registered	Date of Instructions	Quarter 4 (Jan – Mar 2010)

2b) Advice received from Legal Services on CLEUD or CLOPUD

Planning ref	Address	Development	Date advice provided	Date of Decision Notice	Quarter 4 (Jan – Mar 2010)