

Meeting of the Cabinet – 9th September 2009

Report of the Director of Urban Environment

Enabling Development in the Recession

Purpose of Report

1. To seek approval to implement as appropriate a range of initiatives through the Development Control process to support developers and their regeneration partners during the current economic downturn; specifically to extend time limits for commencement of development as appropriate, and to renegotiate planning obligations, when requested.

Background

2. In the current economic climate developers and regeneration partners are increasingly delaying implementation of their planning approvals and are seeking to revisit planning obligation agreements to reduce their financial or in kind contributions. The consequence is that a number of planning permissions are expiring without being implemented and contributions to future infrastructure investment and public realm could be depleted.
3. Within existing planning legislation there is room for flexibility to assist developers at this difficult time and several options for consideration are outlined below.

Timeline

4. Until the introduction of the Planning and Compulsory Purchase Act 2004 planning permissions had a five year time limit for implementation, this was the default period in legislation. Local Planning Authorities (LPA's) have always had the right to specify other time periods for implementation but in practice this is used in exceptional circumstances.
5. The Planning and Compulsory Purchase Act 2004 reduced the life of a planning application from five years to three years to prevent developers sitting on planning permissions without implementing them. It was recognised that delaying implementation for five years, adversely affected regeneration options and could sterilise land for the five year period.
6. It had previously been possible under section 73 of the Town and Country Planning Act 1990, for developers to apply for a new permission without complying with the conditions previously imposed on their approval. An application could then be made to amend time limits, this power was also removed by the 2004 Act.

7. The 2004 Act was written and enacted in a different economic climate and the Government is now looking at ways to assist in the recession. A consultation document was published on 18th June 2009 entitled "Greater Flexibility for Planning Permission: Consultation" which the Government is considering temporarily reinstating the ability to "extend" permission for applications approved on or before the 1st October 2009,
8. It is intended that this will only apply to major applications and only one extension would be permitted. Any changes will take time to come into effect and would require a resubmission of a planning application which is only slightly less onerous than that of a full submission to developers.
9. In times of recession granting a three year permission for a major development that might take 12-18 months to implement is not always viable and the costs of renewal are high which can lead to a real risk of many consents lapsing, which in turn could hamper the ability of developers investing in the regeneration of Dudley Borough to respond swiftly when the economic conditions improve.
10. The risk of sites being "sterilised" by longer term permissions preventing alternative uses coming forward is an issue. If development is delayed for five years the economic situation may have improved; and as the planning obligations negotiated and agreed were based upon a less favourable economic climate the change in circumstances could disadvantage the Borough in terms of appropriate contributions from developers.
11. It is therefore proposed, that where the specifics of the scheme require it (rather than purely national economics), Major proposals will have an appropriately extended or phased time limit for implementation which should positively assist investment in the Borough.

Planning Obligations (S106 Agreements)

12. As demonstrated in Para graph 11 above the timescale for implementation of an approval impacts on planning obligations. Under s106 of the Town & Country Planning Act (and Government circular 5/05) permission may be granted subject to obligations.
13. Planning obligations (or 's106 agreements') are private agreements negotiated, usually in the context of planning applications, between Local planning authorities (LPA) and persons with an interest in a piece of land, and are intended to mitigate against the impact of development in planning terms. They usually take the form of financial contributions for specific purposes for eg. Open space provision or provision of affordable housing.
14. Due to the current economic situation the LPA are receiving increasing numbers of requests from developers to reduce obligations both at the point of determination and to amend obligations already legally finalised. These reductions must be substantiated by open book accounting and are fully auditable.
15. The economic situation means more sites may become unviable without a reduction in the obligation. The intention of the Supplementary Planning Document approved by Cabinet in December 2007 and revised 2009 on Planning Obligations is to mitigate the impact of development not to prevent development. Therefore

some form of pragmatic approach is required to encourage implementation of development sooner rather than later.

16. The LPA is therefore seeking legal advice and is in contact with other authorities regarding steps that could be taken to allow deferred or flexible payments or to effectively claw back or have an overage clause on obligations to ensure that any change in circumstances does not disadvantage the Borough and that any accrued benefits are shared.
17. This would obligate the applicant to resubmit a financial appraisal immediately prior to the commencement of the development. If the margins of viability/profitability have increased since determination further obligations will be payable. If the situation has not improved the approved obligation stands.
18. This gives developers the ability to develop now when they otherwise would not be able to afford to do so, or to do so would be at increased levels of risk. It may also serve to encourage development sooner rather than later.
19. It is therefore proposed that the LPA pursue subject to legal advice the flexibilities with regard to planning obligations as outlined above, and that any renegotiation and overage decisions be taken by Development Control Committee.

Finance

21. There are no direct financial consequences arising from this report. However, endorsement of the actions may result in a reduction in the receipt of planning obligations and planning fees as extended time limits for implementation prevent the need to resubmit. However, there is no guarantee a resubmission (and fee) would be forthcoming and the actions under Planning Obligations may result in investment that would otherwise not be viable and also permit flexible arrangements or claw back if the economic situation improves so that the benefit is "shared" with the Borough.

Law

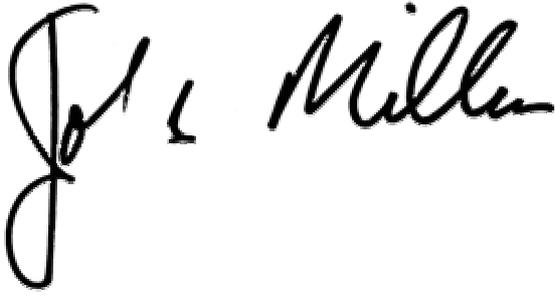
22. The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act and The Planning Act 2008 regulate the Planning system.

Equality Impact

23. The proposals take into account the Council's Policy on Equality and Diversity.

Recommendation

24. It is recommended that Cabinet approve the implementation of the variance of time limits on planning applications where appropriate as determined by the Local Planning Authority together with the implementation of a flexible approach to renegotiation of planning obligations and implementation of an overage clause should economic circumstances improve subject to legal confirmation.



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John B Millar
Director of Urban Environment

Contact Officer: Helen Martin, Head of Planning
Telephone: 01384 814186
Email: helen.martin@dudley.gov.uk

List of Background Papers

The Town and Country Planning Act 1990
The Planning Act 2004
Circular 5/05
Planning for Recovery, British Chambers of Commerce June 2009
Greater Flexibility for Planning Permissions (Consultation) DCLG June 2009