

**WBC guidance on extensions of time for
determination of planning applications.**

Article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out the requirement for councils to give the applicant notice of their determination of a valid application within a specified period – being either the statutory time limit or "such extended period as may be agreed in writing between the applicant and the local planning authority" (provided the applicant has not already given notice of an appeal to the secretary of state).

Agreements to extend the time for determination may be made for both major development applications and other applications that would normally be determined within 8 weeks.

Unless a Planning Performance Agreement has been entered into, it is expected that an application will be determined within the prescribed target. It may be necessary to agree an extension of time with the applicant/agent. However this will only be possible in exceptional circumstances.

Positive and Proactive approach to decision making

The NPPF advises at para 187 that local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Article 35 of the DMPO 2015 requires the local planning authority to include on decision notices a statement explaining how they have dealt with the application in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.

In general the Council will provide feedback and guidance on request in relation to an application and seek amendments if there is a solution that can be achieved and the amendments do not require re-notifying members of the public/ local residents. If potential amendments are significant enough to require re- notification of the public/ local residents then a new application will be required. Only in very exceptional circumstances will this be done as part of the same application.

Warrington Borough Council offers a pre-application service which applicants are encouraged to use. Applications that have been submitted in the absence of any pre-application discussions are likely to be refused without further negotiation where significant amendments are required to make the development acceptable.

Similarly applications that are submitted (where pre-application advice has been sought/ provided) that do not follow/take on board the pre-application advice given are likely to be refused without further negotiation where significant amendments are required to make the development acceptable.

When will an agreement to an extension of time be agreed/ sought from the applicant/ agent?

The agreement to an extension of time will always be at the discretion of the case officer/ Development Manager. The following are examples of when an extension of time might be sought/ agreed to;

- If an application needs to be reported to the DMC
- To allow completion of S106 agreements (any detailed negotiation should take place at pre app stage)
- Where amendments/ additional information has been requested by a consultee
- At the discretion of the Development Manager (or nominated deputy) if an extension of time is required to seek amendments where there is a clear resolution to a scheme
- At the discretion of the Development Manager (or nominated deputy) if there are circumstances that require additional time to assess the application

Recording procedures for an extension of time

WBC considers that exchange of emails between the applicant/ agent and the Development Manager (or nominated deputy) clearly setting out the new date agreed for determination is sufficient to confirm agreement to extension of time between the parties.

The agreement to an extension of time should be received at least a week prior to the 8/13 week target date for decision and should be electronically recorded in the Council's APAS system and uploaded to the council website as part of the online record for transparency reasons.

Extensions of time Planning Advisory Service (PAS) Guidance

Questions and answers on Agreements to extend the time for decision

1. What is the legal basis for extensions of time?

Article 34 of The town and Country Planning (Development Management Procedure) (England) Order 2015 – the DMPO – sets out the requirement for councils to give the applicant notice of their determination of a valid application within a specified period – being either the statutory time limit or "such extended period as may be agreed in writing between the applicant and the local planning authority" provided the applicant has not already given notice of an appeal to the secretary of state).

2. Why is there a need for formal agreements to an extension of time?

Agreements to extend the time for determination can be made for both major development applications and other applications that would normally be determined within 8 weeks. However, for the overall credibility of the planning system, extensions of time should really be the exception and efforts made to meet the statutory timescale wherever possible.

It is well recognised that not all applications for major development are equally complex to deal with. For most of these applications the 13 or 16 week statutory period will give long enough, particularly where issues have been resolved through effective pre-application engagement. But for complex proposals, when pre-application engagement has not happened or when unforeseen issues or the need for amendment arise through the course of considering the application, there may be good reasons why the application will take longer to determine and the s106 agreement to complete. The interests of neither the applicant, the council nor the wider economy are served by councils prematurely refusing permission for an application just because the 13 or 16 week threshold is approaching. In most cases additional time will provide an opportunity for matters to be resolved positively so that a proposal can be recommended for consent. If an application is unacceptable in principle or cannot be modified to become acceptable it is likely that it will be determined within the statutory period.

Similarly non-major application can give rise a wide variety of issues, some of which may take some time to evaluate and where necessary modify or mitigate. These may take longer than 8 weeks.

A planning performance agreement (PPA), agreed during pre-application discussion or a written agreement setting out a timescale for the decision notice to be issued will establish a new, individual target date that takes into account the particular circumstances of the application.

This is the date that the council will be measured against for PS2 returns, provided application are then determined within the agreed time, the application will be counted positively for the purposes of the performance management of the local planning authority. (cf. Improving planning performance: criteria for designation June 2013 DCLG.)

3. What is the format for an extension of time agreement?

There is no prescribed form for an extension of time agreement. It can be either an exchange of letters or a completed agreement form and it can be either electronic or a hard copy.

It should clearly set out a new date by which the decision letter issued and be signed by both the LPA and the applicant. In most cases, it will be sufficient to simply agree a new date by which time the council will have determined the application.

4. When should an extension of time agreement be made?

There is no prescription about when the agreement can be made following the receipt of a valid application, although the DMPO art 34 (2)c) states that an extended period cannot be agreed if the applicant has already given notice of the submission of an appeal against non-determination

Clearly, as the active word is "agreement", it will be good practice for any approach to agree an extension of time to be a process of negotiation between the council and the applicant rather than a unilateral request. Good practice also indicates that the appropriate time for this discussion will be once the outstanding issues about the application are identified and a mutual understanding reached as to the path for resolving them. If this path will take lead beyond the statutory target for determination, an agreement should be sought. An extension of time is best agreed as early as possible in order to provide certainty. In most cases this will be before the expiry of the statutory period. But if the applicant is agreeable to an extension at a later date and has not already given notice of an appeal against non-determination, this is possible.

5. Could there be more than one agreement to extend the time for the determination?

Yes, if agreed by all parties, but good practice would be to make sure the first, agreed new target date was realistic given the work to be done , so a further agreement wouldn't be necessary. If a further agreement does become necessary, it will again have to be registered within the quarter to count for statistical performance management purposes.

6. How does an extension of time affect the right of an applicant to appeal against non-determination?

The right to submit an appeal against non-determination is set out in the Town & Country Planning Act 1990 s78(2). An applicant can appeal to the Secretary of State if the LPA has failed to give notice of its decision within the relevant statutory period (if there is no extension of time in place). Where there is an agreed extension of time, an appeal cannot be made until that extended period has elapsed. Either way, an applicant has 6 months from the expiry of the statutory or extended period(s) in which to give notice of an appeal.