

PURPOSE OF THIS PROTOCOL

The purpose of this Protocol is to provide clarity and consistency for officers, applicants, agents and all those involved in the planning process as to how and when Cherwell Council will negotiate on submitted planning applications. This is important in order to manage expectations of what can be negotiated during a planning application, to guide the efficient and timely processing of applications, to provide certainty and reliability in decision-making, and to promote the value of effective and meaningful pre-application discussions.

It also provides guidance on when Cherwell Council will seek to extend the statutory period within which a decision upon an application will be reached.

Part 1 of this Protocol outlines the guiding principles which inform the Council's approach to negotiating submitted applications and agreeing extensions of time, drawing from Government planning policy and guidance contained in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).

Part 2 is a flowchart which illustrates and summarises how and when the Council will negotiate on submitted planning applications.

It is important to note that there will always be exceptions when the particular circumstances of an application will justify negotiating or agreeing extensions of time outside the scope of this Protocol. However such circumstances will be at the discretion of the Development Services Manager or relevant Team Leader.

PART 1

The role of negotiations

The ability to negotiate amendments, clarify issues and provide additional information during the course of a planning application is an important part of the planning process and can contribute to delivering sustainable, high quality development. This is recognised by [Paragraphs 186 and 187](#) of the NPPF which state that: *Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development...should look for solutions rather than problems (and) should seek to approve applications for sustainable development where possible.*

However **the ability to negotiate during the course of an application should not be relied upon as means to resolve issues which could and should have been addressed prior to submission.** It is also not an opportunity to enter into protracted discussions about whether a proposal which is unacceptable as submitted can be made acceptable. Instead **the Council's preference, as reinforced by Government policy and guidance, is for negotiations to take place prior to the submission of application.**

The value of pre-application advice

Government guidance on [Pre-application Engagement](#) is unequivocal about the importance of pre-application discussions. It states that: *pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likely success.* Furthermore, although pre-application discussions can be used to establish whether the principle of development is likely to be supported, they also have an important role to play in delivering the Government's objective of securing high quality design. The PPG goes on to state that: *being able to inform and influence design at (the pre-application stage) is more efficient than trying to implement suggested revisions at a later stage.*

Cherwell Council offers a pre-application service, and all potential applicants are encouraged to use this service before submitting an application. Information and guidance about the Council's pre-application service, including how to apply and the timescales for a response, can be viewed online by [clicking here](#).

The importance of timely decisions

Timely decisions are important not only to supporting the delivery of sustainable development, but also to providing certainty and transparency in decision-making for all those involved in the planning process, including consultees and the public. Given

the volume and complexity of planning work that Cherwell Council deals with on a regular basis, it is also important that decisions are made in a timely manner so as not to unduly impact on the capacity of officers to deal with applications efficiently or to impact on the delivery and outputs of the Service as a whole.

There is a statutory requirement for local planning authorities to determine valid planning applications within nationally set time limits. Usually these are 13 weeks for applications for major development (16 weeks in the case of EIA development), and 8 weeks for all other types of development. The guidance on [Determining a Planning Application](#) in the PPG states that: *once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant.*

The PPG goes on to state that once a valid application is already being considered, extensions of time should only be requested if: *it becomes clear that more time than the statutory period is genuinely required.* In light of the importance of timely decision making **the ability to agree an extension of time is therefore to be used as an exception, and must not be used routinely as a means of negotiating applications which are clearly unacceptable as submitted.** In particular agreeing extensions of time without clarity on what is needed to make a proposal acceptable (and by when) will promote uncertainty and undermine public confidence in the planning system. It can also undermine the Council's ability to manage time and resources efficiently to deliver a good level of service to all those engaged in the planning application process.

When is an “Extension of Time” appropriate?

Cherwell Council's approach to whether it is appropriate to seek an extension of time to the determination period for an application depends to a large extent on the type and complexity of the application being dealt with. As such the decision will be made on a case by case basis, having regard to the following guidance.

Major Development

For **Major** applications (10 or more dwellings or 1000sqm or more of floorspace being created), given their increased complexity and with multiple and often competing issues with extensive consultee input, it will often be more efficient and productive to seek an extension of time to allow any outstanding issues to be resolved. This will particularly be the case where pre-application discussions have informed the application submission and it is reasonably clear that a positive outcome can be agreed.

Where pre-application discussions have not taken place, there are significant unresolved objections to a proposal from statutory consultees, or it is clear that the principle of development will not be supported, it is less likely that an extension of

time will be agreed. In all cases an assessment will be made of the likelihood of the additional time resulting in a satisfactory positive solution, and after an open discussion with the applicant.

Given the greater complexity of major development proposals, particularly on sites allocated in the Local Plan, it may be beneficial to all parties to enter into a Planning Performance Agreement (PPA) prior to submitting an application. This can be used to determine a bespoke timetable for determining the application once submitted. Discussions about entering in to a PPA should take place within Cherwell Council's pre-application service. Further information and guidance about the use of PPAs is provided in the PPG which you can view by [clicking here](#).

Minor and Other Developments

For **Minor and other** application types (i.e. those where the statutory determination period is 8 weeks, including listed building consent, advertisement consent, prior approvals and householder applications), extensions of time are only likely to be appropriate when it is clear what needs to happen to achieve a positive outcome, and there is agreement on the timescale within which this can be achieved.

Initiating negotiations

Government guidance on [Making an Application](#) is clear that: *it is at the discretion of the local planning authority whether to accept (changes to submitted applications), to determine if the changes need to be re-consulted on, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.* Cherwell Council's strong preference is that applicants do not submit amendments or additional information once an application is valid, unless invited to do so by the case officer. **If amendments or additional information is submitted without having been invited, it will be entirely at the discretion of the Local Planning Authority whether to accept it.**

The flowchart in Part 2 of this Protocol summarises the circumstances when Cherwell Council will accept amendments or additional information. Key considerations will be whether or not the changes are likely to result in a materially different development such that a new application should be submitted, whether the changes make the development acceptable without raising other issues, and whether it will be necessary to re-consult on, or re-publicise, the application. The latter will be particularly important in any decision whether to seek an extension of time to determine the application.

N.B: Normally, only one round of negotiation will be undertaken once an application is accepted as valid.

Agreeing Extensions of Time

If a case officer is considering the need for an extension of time this should be discussed with and agreed beforehand by the Development Services Manager or relevant Team Leader. Normally only one extension of time will be appropriate per application, as it should be clear at the point of agreeing the extension of time what needs to happen and by when in order for the application to be determined.

Where it is decided to request an extension of time, this should first be discussed verbally with the applicant or their agent and the request then confirmed in writing. Cherwell Council will endeavour to make such requests as early as possible in the application, once the need for an extension of time has become clear. This will usually be in the fifth/sixth week of most applications or 8-10 weeks in major applications, after the initial round of consultation has closed and the case officer has had time to review the comments and issues raised.

The written request will specify the following:

- The reason for the request
- Any additional information or amended plans required
- A timetable for the receipt of the above documentation
- Any additional consultation/publicity required
- A timetable for the future processing of the application and the revised target date by which time a decision will be made.

Confirmation in writing of the applicant's agreement to the extension of time will be required. **If written confirmation is not provided within a reasonable timescale, it will be assumed that the extension of time has not been agreed and the application will be determined.**

Whilst Cherwell Council will always seek to determine applications within the statutory period or within such other period as has been agreed in writing with the applicant or their agent, it is sometimes the case that this will not be possible (e.g. due to volume of work or resourcing issues). In such cases, Cherwell Council will still look to notify the applicant of the delay as soon as possible and seek to agree a revised timetable for determining the application. Moreover, where the delay in determining an application is not a direct result of issues or inadequacies arising from the application, Cherwell Council will apply the guidance in this Protocol in respect of negotiating amendments more flexibly, to minimise further delay to agreeing and approving otherwise acceptable development.

PART 2: NEGOTIATION FLOWCHART

