

PURPOSE OF THIS PROTOCOL

The purpose of this Protocol is to provide clarity and consistency regarding how and when Cherwell District 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.

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 Paragraph 38 of the NPPF which states that: *Local planning authorities should approach decisions on proposed development in a positive and creative way...decision-makers at every level 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.*

The 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 on the links below:

[Cherwell District Council Pre-application Advice Service](#)

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 the 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 planning 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.

Initiating negotiations

Paragraph 061 of the 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.* The 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 Council whether to accept it.**

When we negotiate

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.

In summary, planning applications typically fall into one of the following 4 categories:

1. Scheme acceptable as submitted – Approval
2. Scheme unacceptable as submitted, but can be made acceptable subject to minor amendments without the need for further consultation – Negotiate
3. Scheme unacceptable as submitted, but can potentially be made acceptable subject to additional information being provided and/or minor amendments that require the need for further consultation – Negotiate
4. Scheme fundamentally unacceptable as submitted (e.g. the principle of development cannot be supported or the amount of change required would result in a materially different proposal) – Refusal

In the case of 2 and 3 above, an extension of time may be required to allow negotiations to take place. Circumstances include allowing for amended plans and/or additional information to be submitted, and/or for re-consultation and publicity to take place. **Normally, only one round of negotiation will be undertaken once an application is accepted as valid.** Further guidance on the process for agreeing extensions of time is given below.

In the case of 4 above, the reasons for refusal will advise the applicant or agent what the problems are so that they can seek to address these in a re-submitted

application, if they wish to do this. The case officer will also notify the applicant or their agent at least 48 hours before the decision is due to be made, to advise them of the likely reasons for refusal and to enable the applicant to consider whether they wish to withdraw the application before the decision is made.

Agreeing Extensions of Time

Where an extension of time is considered appropriate and necessary to allow for negotiations to take place, the case officer will endeavour to make such requests as early as possible in the application. This will usually be after the initial round of consultation has closed and the case officer has had time to review the comments and issues raised.

The request will be in writing and 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 the timescale specified in the request, it will be assumed that the extension of time has not been agreed and the application will be determined.

Disclaimer: 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 Senior Manager or relevant Line Manager.