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How to Deal With Delays in Planning Applications



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This month, I thought it would be useful to look back at our recent experiences in how officers tend to deal with PD and Prior Approval applications, and how we have sought to deal with a delay in planning applications. This also provides an insight as to how applications are dealt with and the steps they have to go through; even if you cannot do much about it, it is important to be aware of it, so readers can build the possible costs and the extent of delay into their appraisals and manage expectations with investors and others.

Planning application process

When any planning application goes in, it requires monitoring and chasing. The job is only ever 'half done' just by submitting the application. Applicants need to chase up registration, then validation of the application, to ensure that it is properly 'in the system' and travelling on its way through the formal application system.

Summary of the planning application process

- ♦ Application submission
- ♦ Planning portal validation (wk 0)
- ♦ Council registration (wk 1)
- ♦ Council validation (wk 1-2)
- ♦ Public consultation (wk 2-8/ at least 21 days)
- ♦ Scheme amendment (+ 1-2 wks consult.?)
- ♦ Officer review and reporting (delegated)
- ♦ Committee report (1 wk from meeting)
- ♦ Registration of interest (check time limits)
- ♦ Committee and decision/resolution to grant
- ♦ Section 106/formal PP

The initial administration, through to the start of planning notices going up near the site, normally takes 1-2 weeks, although we are seeing some authorities taking longer



and this being stretched out to 3-4 weeks in some cases.

A mix of a rise in development activity and planning applications, coupled with staff shortages (early retirement, cutbacks, maternity/paternity leave, 'frequent' holidays) unable to cope with the growing workload, has led to a crisis in planning application handling at the local level. We experience similar problems with the planning appeal system, with some applications taking 'months' before an inspector is allocated and the appeal timetable formally starts.

At the local level, once the application has been registered, allocated to an officer and then validated, it will go out to public

consultation and statutory and internal consultation (e.g. the Environment Agency, Local Lead Flood Authority, Highways team) for a period of at least three weeks.

Overall, this means that the Council's planning officer on the application is usually not even looking at the application until about 5-6 weeks' after submission – in some cases, not until the last week before the end of the target deadline at the end of the 8th week!

Permitted Development – speed over engagement

Without a doubt, we have noticed a clear reluctance amongst local authorities to engage with us and discuss the progress of the application and their thoughts at any time

until the decision is made. This is particularly marked with permitted development and prior approval applications.

This is obviously very frustrating. The nature of permitted development and prior approval applications is mixed – they typically comprise partly factual or legal matters and partly an assessment of the planning merits, such as highways, noise or impact on local services. It is for these reasons, the latter especially, that they share characteristics with normal planning applications and need a similar degree of attention.

Permitted development and prior approval decisions are often ‘rushed’ through the final stages of the process, after the public consultation stage with no opportunity to amend schemes prior to a decision, leaving little to no time for changes, even minor tweaks, to respond to concerns and ensure officer support and approval.

Having spoken to officers and heads of planning about the issue, most have cited the pressures on officers, or on officer time, and current workloads (in some cases, three times pre-2020 levels, but with less staff compared to pre-pandemic) for focussing additional officer time for engagement on planning applications, and away from PD and Prior Approval applications. It is almost a ‘rule of practice’ now that officers have, more or less, been instructed by their line managers and heads of service NOT to engage with applicants or accept or negotiate any changes to an application once it has been submitted. The focus is on making a decision within eight weeks, even though in the majority of PA and PD applications there is now no ‘deemed approval’ if the Council delays beyond eight weeks.

Some officers cite the nature of PD and Prior Approval application process as a basis for this off-hand approach to these applications. They claim that the ‘legal’ nature of the process means that they cannot accept changes to the scheme drawings once they are submitted (e.g. changes to the design or external appearance of a new roof or removal of windows or roof lights from side elevations), even if this does not affect the ‘description of development’ on the application form or the number of units being proposed. They will sometimes accept new or additional or revised professional reports (e.g. sunlight and daylight reports). This is not a ‘legal

requirement’ of Councils, compelling them by law to act in this way. This is clearly discretionary from a local ‘case management’ perspective; we have confirmed as much with heads of service when pushing further on this point. The cynic within me, would also go as far as to suggest that this is a rather ‘convenient’ approach for some local authorities looking for ways to stop or delay PD and Prior Approval applications that they might, if given the choice, prefer to refuse.

It is probably fair to say that the ‘use’ of the pandemic as a ‘reason’ for staff shortages is not fully understood and is often ‘greeted’ with a heavy dose of scepticism amongst developer clients. Furthermore, we cannot help but notice the frequency with which some officers appear to be on annual leave throughout the course of an application, which adds to delay and uncertainty in the passage of an application.

“ Delay, disruption and frustration are ‘givens’ in the planning system. They are part of the ‘pain’ that all developers and development teams have to go through ”

Planning applications – minor vs major?

Lack of engagement in many cases has now, for some time, started to flow into planning applications with some ‘minor’ applications (typically, proposals for less than 1,000 additional sqm or fewer than 10 new homes) starting to be treated in a similar way to PD and Prior Approval applications.

With almost all planning applications, especially where the initial proposals are probably pushing the limits of the site opportunity, we expect some degree of negotiation in the course of the application with officers. This usually happens around the 5th to 7th week of the application with officers, following public and internal consultation responses. This is a tight window, not just for us but also for the design team, who then have to work with us and the client to come up with a design solution that addresses officers’ concerns and resource the work needed to turn around changes under time pressure from officers.

However, one recent extreme case saw officers revert to us with ‘feedback’ 5½ months after the application was submitted to them! To make matters worse, the same local authority agreed to provide pre-application advice and then failed to do so. They then came back to us recently citing ‘design and conservation area concerns’, have not provided written comments to share with us to which we can respond, and have indicated they would either refuse the application or we can withdraw and start all over again with the benefit of a brief meeting with the team leader to discuss our scheme options one month from now, just before the Christmas break! This is for a scheme of 25 new dwellings on a town centre site allocated for regeneration and in a local authority that is falling behind on its 5-year housing supply targets and has an accrued deficit of 1,127 new homes in its borough.

In another recent case, in an application for 26 units, the application was submitted in December 2020. The scheme was revised in March 2021, following discussions with the case officer and head of planning (allowing for an extended public consultation phase). However, the extension of COVID-19 restrictions on ‘working from home’ and other measures, meant that we had to undertake a new Traffic and Parking Survey, which could not be done until after these restrictions ended on 19 July 2021 (we were, fortunately, able to get this done before the summer school break started two days later). Planning Committees did not take place over the summer and we have only just now been given a Committee date of mid-December, a delay of three months after the officers signalled their support for the scheme in early September. A backlog of applications going to Planning Committee was cited. Despite lobbying to Councillors, the Leader of the Council and the Head of Planning, we could not get the Council to budge on this.

Mitigating or reducing delay

A delay in applications cannot be avoided. The 8-week deadline, other than for the most straightforward PD and Prior Approval applications, is now more of an aspiration rather than a guide, never mind a rule.

However, there are a few things we have learnt along the way that may help:

1. PD and Prior Approval applications must be prepared with utmost diligence and accuracy throughout. Revised plans, ►



even on seemingly trivial matters, can be used as a basis by officers to refuse the application – and they will not usually tell you until after eight weeks.

2. Seek professional planning consultancy advice on strategy and the need for initial permission for new windows and doors to the existing building BEFORE submitting your PD or Prior Approval application. It may be prudent to search out this advice before completing on the deal to acquire the site.

3. Tenacity in chasing up applications through the process is key. Make sure that you are clear with your consultancy team that this will be done and when it will be done. It is easily forgotten in some case, or wires get crossed between client and consultant, and then it does

not get done and the application is left to linger unattended.

4. Don't be afraid to go 'up the chain' to team leaders and then to heads of service, or finally to executive directors, councillors, portfolio members for planning or leaders of the Council. A delicate balance needs to be struck in doing this so as not to jeopardise the relationship with officers.

5. Knowing when and how to push officers, go up the chain of command or complain to Councillors is difficult and extremely subjective. Discuss this with your professional team, exploit the inherent relationships with the Council within the team and contacts made through any prior informal consultation by the team at the local level.

6. Pre-application helps to get an early steer and build relationship with officers,

but is rather pointless on PD and Prior Approval applications, should not be necessary in these cases, and not always a guarantee that the officer might not miss something, which they later raise during the formal application.

7. Think well in advance of all the professional reports that will be required. All consultancies are busy and people's time needs to be booked in, not left to the last minute, where possible. Transport surveys can only be done during school term times at least one week clear of the start or end of school holidays, and bat surveys and some other ecological reports can only be done between May and September.

Conclusion

Delay, disruption and frustration are 'givens' in the planning system. They are part of the 'pain' that all developers and development teams have to go through on the way to achieving a successful scheme.

The system has been chronically under-funded for years by successive Governments, preferring instead quick 'sound-bite' policies that might be a sticking-plaster to short term housing need, but do nothing to address the increasingly poor service delivery and bottlenecks within the current system.

If you cannot change or influence what you cannot control, then it is best to focus with your team on how best to mitigate these potential problems, look for solutions and the right planning and development strategy, and manage expectations at all levels within the consultancy team as well as on the client and investor side. 

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