

Web site: <http://www.DurhamCity.org>

Accelerated Planning System Consultation  
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Department for Levelling Up, Communities and Housing  
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## Response from the City of Durham Trust

The City of Durham Trust is a local civic society and registered charity. Our purpose is to celebrate, protect and enhance the heritage and landscape of the City of Durham.

The Trust is dedicated to giving a strong and independent voice to ordinary people who:

- care about where they live and everything that makes the City of Durham such a special place;
- have a store of knowledge and want to make a meaningful contribution;
- want to participate in and influence planning in order to keep the City distinctive and liveable;
- are keen to balance heritage and growth and to put sustainability at the heart of planning for the City.

The Trust reviews all planning applications in the City and the surrounding area. From 19 April 2023 to 16 April 2024 the Trustees considered 331 planning applications. For these 76 objections were made, 12 letters of support and 15 letters of comments/concerns.

## Summary

The Trust considers that it is more important to achieve the *right* decision than a *speedy* decision. Consequently these proposals are misconceived. Given the length of time that it takes to complete a major project, the time taken in gaining planning permission is only a small part of the whole. Local people and the community will be affected by a wrong, rushed, decision for years and probably decades. It is worth spending a little more time at the outset in order to get the right decision.

Applicants can take all the time they need to prepare their application. The Council and in particular third parties have a very limited time, which may not be sufficient especially where professional advice is needed to counter assertions by the applicant. This imbalance favours developers and may indeed be contrary to Article 6 of the Human Rights Act.

The progress of a planning application is not entirely within the control of the planning authority and the applicant. A sufficient number of public objections could derail it. This is unfair on the planning authority.

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## Accelerated Planning Service

Ten weeks is too short a period to allow for a proper consideration of many major planning applications. Some may be able to be processed in that time and that would be welcome, but more will need extra time for a proper decision to be reached that takes into account all relevant factors.

The premise of this proposal is that the time taken to determine a planning application is down to the applicant and the planning authority. But external factors beyond the control of these parties can mean that more time is needed.

The proposal allows 70 days from a planning application being validated to a decision being reached. The timetable would be:

**Day 1:** The application is validated and published on the Council's website, in the case of Durham County Council this would be the planning portal. The Council now notifies statutory consultees and neighbours, erects site notices, and places an advertisement in the local press.

**Day 10:** Press advertisement appears. The actual date depends on the publication schedule of the local paper, and it can take as long as nine days if the cut-off date is just missed and it has to wait till the following week. We have seen many examples of it taking longer, but we are assuming that given this is an accelerated application it would be prioritised. In our experience the press advertisement is usually the last of the statutory consultations to occur.

**Day 31:** The planning application cannot be determined until the 21-day consultation period has expired. Comments could arrive at any time up till midnight.

**Day 32:** Planning officers will be considering the representations received at the last minute. Further representations may be received after the closing date and these should also be considered.

**Day 62:** The agenda for the planning committee is published, giving seven clear days' notice (days 63 to 69) before the meeting date, as required by law and the Council's standing orders.

**Day 70:** Because this is a major application the Council's constitution requires it to be considered by Committee, in Durham's case the County Planning Committee, rather than being dealt with under delegated powers. This is the latest date that the planning committee could meet within the ten-week determination period.

While the consultation document says at paragraph 16

Local communities and statutory consultees would still get at least 21 days to consider and make representations on the proposals. Local planning authorities would be required to determine the application in the usual way...

this does not anticipate that the representations made by third parties might raise issues that had not been anticipated by the applicant or the Council during pre-application consultations.

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These will need to be put to the applicant who must be given time to respond, and then a further round of consultations may well be needed.

Major applications can face communities and localities with issues that require expert consultant advice. The commissioning of such advice, the assessment by the consultant, and the provision of a report could well take all or more of the total of 21 days from learning of the application to the cut-off point for making submissions. Article 6 of the Human Rights Act 1998 protects the right to a fair and public hearing. That hearing (the planning committee) would not be fair if the objectors were not afforded sufficient time to marshal expert opinion to put their side of the case.

Major planning applications have the potential to be controversial. A planning application<sup>1</sup> for the erection of a new headquarters for the County Council in Durham City proved to be so. It amounted to up to 10,949m<sup>2</sup> of floorspace, which is more than ten times the threshold for what is considered a major development. The planning portal has 1,251 documents. The advertisement in the *Northern Echo* was published on 16 August 2018. By 6 September (21 days later) there had been 149 public comments. Some of these raised the issue that the application site included common land, which had not been considered when the application was validated. Addressing this required a re-consultation.

Reducing the time allowed for assessing an application from 13 weeks to 10 weeks may appear to be a 23% reduction, but because of the fixed time that must be allowed at the start (31 days) and at the end (8 days) the actual time available would fall from 52 days to 31 days, a 40% reduction. This calculation makes no allowance for bank holidays, and especially not for Christmas and New Year. Nor does it allow for any factors outside the control of the planning authority or the applicant, particularly the volume and relevance of public objections. The officer assessing the case cited above had to consider a total of 964 letters of representation, of which 956 were letters of objection to the development.

Furthermore, since 12 February 2024 for large sites, and 2 April 2024 for small sites, planning applications must include the biodiversity net gain appraisal of their site plus a draft plan for how this can be achieved. And the council has to review this for correctness and achievability. All of this takes time so there is a case for increasing the time allowed to, we suggest, 16 weeks.

Our answers to the questions posed in the consultation document are:

**Question 1.** Do you agree with the proposal for an Accelerated Planning Service?

No

**Question 2.** Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Irrelevant, as the question assumes the answer to question 1 would be “yes”.

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<sup>1</sup> <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PCW776GDMHG00>

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**Question 3.** Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

No. The case for this is even weaker than for non-EIA development.

**Question 4.** Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

Should it be decided to go ahead with an Accelerated Planning Service it is essential that all of these are excluded. In the case of World Heritage Sites (of which Durham has one) the exclusion must cover all of the inner setting of the WHS. In addition, proposals in conservation areas should be excluded.

**Question 5.** Do you agree that the Accelerated Planning Service should:

b) encourage pre-application engagement

This is good practice regardless of whether or not there is an Accelerated Planning Service.

c) encourage notification of statutory consultees before the application is made

This is good practice regardless of whether or not there is an Accelerated Planning Service.

**Question 6.** Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

Again, this question assumes the answer to question 1 would be “yes”.

**Question 7.** Do you consider that the refund of the planning fee should be:

Again, this question assumes the answer to question 1 would be “yes”.

**Question 8.** Do you have views about how statutory consultees can best support the Accelerated Planning Service?

By taking as long as is necessary to give a proper, considered, response to the application. If the consequence is that the Accelerated Planning Service becomes unworkable, this would be a welcome outcome. Statutory consultees should not be bullied.

**Question 9.** Do you consider that the Accelerated Planning Service could be extended ...

a. major infrastructure development

No

b. major residential development

No

c. any other development

No

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If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

Irrelevant

**Question 10.** Do you prefer:

Again, this question assumes the answer to question 1 would be “yes”.

**Question 11.** In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

Again, this question assumes the answer to question 1 would be “yes”.

## **Planning performance and extension of time agreements**

The premise of this proposal is that the time taken to determine a planning application is down to the planning authority and the applicant, and nobody else. It ignores the role that other statutory consultees, voluntary bodies such as the Trust, and members of the public have to play. All of these can and do raise issues that the developer has overlooked or hoped would be overlooked. These need to be considered.

In addition, planning authorities have limited resources and central government funding of local government has been considerably reduced. These proposals need increased funding but the proposal does not mention this. Paragraphs 36 and 37 note the increased use of extension of time agreements, but do not suggest any causes, the most obvious of which is a lack of resources in planning departments.

Our answers to the questions posed in the consultation document are:

**Question 12.** Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

No. Project managers have a saying “what gets measured, gets done”. Once a planning application has missed the target time for determination there is no further incentive to determine that application, quite the opposite. The logical approach for the planning department would be to determine applications that could be determined within the time limit and cynically ignore those that were already too late.

In addition, applications may remain undetermined because of factors outside the control of the planning authority. A common issue, particularly with householder applications, is where additional information has been requested from the applicant but it is not forthcoming and the application is in effect abandoned.

**Question 13.** Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

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This question pre-supposes that a single yes/no measure is appropriate. What is needed is a more nuanced set of measures, perhaps the median time to determine plus the percentage of applications outstanding after a longer period, such as a year.

**Question 14.** Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on [...]:

All of the alternatives offered here assume that the speed of determination depends on the efficiency of the planning authority and no other party. The new criteria are unsuitable because they offer no flexibility. The current criteria are better because they allow for the time limit to be extended, but retaining just that option is not on the table.

## **Assessment period for performance for speed of decision-making**

Given that we disagree with the proposed performance thresholds, we are not answering questions 15, 16, and 17.

## **Removing the ability to use extension of time agreements for householder applications and for repeat agreements on the same application for other types of application**

Paragraph 54 says

We are however concerned that extension of time agreements are being used for smaller and less complex householder applications, without good reason, to compensate for delays in decision-making and poor performance.

It then goes on to propose the removal of the ability to use extension of time agreements for householder applications in all cases. This is sloppy and unjustified. The proportion of extensions granted without good reason is not quantified. By implication there will be good reasons why some extensions are being agreed.

In our experience many householder applications, especially in conservation areas, are acceptable in principle but need to be modified in order to meet design standards appropriate to their setting, for example avoiding uPVC windows and doors. We note recent changes to the NPPF so paragraph 131 now says *The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*. And the Secretary of State, in his speech to the RIBA cited at the start of this consultation said “I want us – as a nation – once again ... to be commissioning new homes of beauty designed to endure”. Achieving this laudable objective may require more time.

The County Durham Plan (the local development framework) includes a policy requiring all new homes to meet the Nationally Described Space Standard. We often see proposals where this is not the case, but where moving an internal wall can achieve compliance. If extension of time agreements are not available the planning authority would have to refuse the application and the applicant would have to start again.

Our answers to the questions posed in the consultation document are:

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**Question 18.** Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

No

**Question 19.** What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

This should be discouraged, but there may be circumstances where it may be justified, so it should not be prohibited.

## **Simplified process for planning written representation appeals**

We agree with the opening sentence of paragraph 56: *A fair and transparent appeal process is central to the operation of our planning system.* However, the following sentence where it refers to *communities that need to know what development is acceptable in their areas* seems to demote communities to the role of onlookers. Communities and indeed individuals need to be active participants in planning appeals where the outcome affects them personally.

The existing expedited written representations procedures have in our experience usually worked reasonably well, but not in all cases. The ones that haven't worked have been where there has been a relevant change of circumstances between the Council determining the application and the appeal documentation being considered.

Many appeals in Durham concern the conversion of family homes in use class C3 to student accommodation in use classes C4 or *sui generis*. (There is an Article 4 direction in force which means this is not permitted development.) A key factor is the number of students in Durham and where they live. The number of students in Durham peaked as a result of special measures taken due to the Covid pandemic. The number has now fallen. Applications determined by the Council in one academic year may be appealed and come before the inspector in the following academic year. The interests of fairness require that the appeal must not be decided on the basis of information that the passage of time has shown to be incorrect or outdated.

We are concerned at the inclusion of appeals on reserved matters in the list. The scope of what matters can be reserved is extremely wide. As an example, the Trust was recently involved in three linked appeals for full planning applications, all of which had matters reserved. The description of the first of these illustrates the problem:

Demolition of existing buildings adjacent to B6532 and outline planning permission (all matters reserved except for access) for a maximum of 1,550 residential dwellings (Use Class C3), a local centre (Use Classes E and F2), public house (Use Class Sui Generis) and primary school (Use Class F1), compensatory improvements to the Green Belt, associated infrastructure and landscaping.

Currently should the following reserved matters application be refused and appealed, the planning application would go to a full appeal. We anticipate that should the simplified process be adopted, the Planning Inspectorate would use its powers as set out in paragraph 63 and not have written representations in complex cases such as the one described. But this example is at

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one end of a spectrum that has quite trivial matters at the other end. Criteria would be needed to decide which appeals could use the simplified process, and these should be published.

A further factor is that the relevant policies may change between the council determining the application and it coming before the Inspector. There were examples of this in Durham when the local plan (the County Durham Plan) and the City of Durham Neighbourhood Plan were adopted on 21 October 2020 and 7 July 2021 respectively. The NPPF has been changed several times in recent years and will no doubt continue to be in the future. The County Council has issued several supplementary planning documents and work is progressing on others.

It is important that a way is found so that interested parties may make representations when they consider that the simplified process is not appropriate, despite first appearances.

Our answers to the questions posed in the consultation document are:

**Question 20.** Do you agree with the proposals for the simplified written representation appeal route?

No. There is no way to make representations about the appropriateness of the procedure in individual cases.

**Question 21.** Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded from the simplified written representation appeal route?

No. Reserved matters should be excluded for the reasons set out above.

**Question 22.** Are there any other types of appeals which should be included in a simplified written representation appeal route?

No

**Question 23.** Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure?

Yes. Our reasons are set out above.

**Question 24.** Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes. In addition there should be a mechanism whereby interested parties can make representations about why they consider that the non-simplified process should be used.

**Question 25.** Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?

Yes



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## **Varying and overlapping planning permissions**

The Trust is not responding to this part of the consultation nor to questions 25 to 35.

## **Public Sector Equality Duty**

The Trust is not responding to this part of the consultation nor to question 36.

Yours faithfully

John Lowe  
Chair of the City of Durham Trust