

PLANNING BULLETIN - PRIOR APPROVAL – 56 DAY RULE

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UK Real Estate Alert

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Historically, there was no scope to agree an extension of time for the determination of a prior approval application in relation to a permitted development. Article 7 of the Town and Country Planning (General Permitted Development) Order 2015 ("GPDO") appears to provide greater flexibility by requiring the local planning authority ("LPA") to make a decision:

- (a) within the period specified in the relevant provision of Schedule 2,*
- (b) where no period is specified, within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or*
- (c) within such longer period as may be agreed by the applicant and the authority in writing.*

However, the High Court has held that the option in Article 7 (c) is not an alternative to (a) or (b), but only to (b). In other words, an extension of time is not permissible in respect of prior approval applications where Schedule 2 of the GPDO specifies a period of time for the LPA's decision-making.

For example, paragraph W(11) of Schedule 2, Part 3, specifies a period of 56 days for the LPA's decision to either confirm that prior approval is not required or to grant or refuse prior approval for various types of change of use, such as office to residential or retail to residential.

The High Court reasoned as follows:

Where a period is specified, the deemed grant of planning permission takes place at the end of that period, so the authority's decision must be before that. If no period is specified, the deemed grant takes place only when a decision is made, and there is therefore scope for agreeing a time within which the authority has to make a decision.

This restrictive interpretation was held to be in the interests of good administration and certainty: where legislation sets a time limit, the regulator should be constrained to act promptly, and where a positive effect (in this case, grant of planning permission) can be the result of inaction, the period of inaction should be subject to as little variation as possible.

This decision has a number of practical implications. It may lead to an increased number of 'in time' refusals (for example, for failure to supply sufficient information to make a determination) and consequential appeals. It may

also result in applicants purporting to exercise permitted development rights which do not exist. The High Court quashed the LPA's refusal notice as being without jurisdiction (as granted after the 56 days had elapsed, even though within the time extension which had been agreed with the applicant) but specifically declined to make a declaration that the development in question could proceed. This ultimately depends on whether or not the development meets the various conditions, limitations and restrictions imposed by the GPDO.