**What is the purpose of the provisions in the Business and Planning Act 2020 for extending planning permissions and listed building consents?**

The Business and Planning Act 2020 temporarily modifies the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 to enable certain planning permissions and listed building consents in England which have lapsed or are due to lapse during 2020 to be extended.

This is in recognition of the effect coronavirus has had on the planning system and the construction sector and in particular the delays it has caused to the commencement of new development. This extension will allow the commencement of the planning permissions and listed building consents without the need for a new application.

**Which planning permissions are extended?**

Under section 93A of the Town and Country Planning Act 1990, unimplemented planning permissions with time limits for implementation which were due to lapse between [28 days after royal assent] (when the provisions came into force) and 31 December 2020 are extended to 1 April 2021. This happens automatically, with no requirement to obtain Additional Environmental Approval.

In this guidance, a ‘time limit for implementation’ refers to a condition which has the effect that development pursuant to a planning permission, or works pursuant to a listed building consent, must be begun not later than a certain date. In most cases, a condition (or deemed condition) imposing a time limit for implementation is attached to a planning permission by or under section 91 of the Town and Country Planning Act 1990; and to a listed building consent by or under section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In addition, unimplemented planning permissions with time limits for implementation which passed between 23 March 2020 and [28 days after royal assent] are also restored and the time limit extended to 1 April 2021, subject to Additional Environmental Approval being granted. Further details of the Additional Environmental Approval process are set out below.

**What is the position in relation to outline planning permission?**

Outline planning permissions may have lapsed or be at risk of lapsing for two reasons: (a) development has not commenced; or (b) applications for reserved matters approval have not been submitted for determination by the local planning authority within the period specified by a condition imposed on an outline planning permission by or under section 92(2)(a) of the Town and Country Planning Act 1990.

Time limits for implementation relating to outline planning permissions are subject to extension in the same way as other planning permissions:

* time limits for implementation passed between [28 days after royal assent] and 31 December 2020 are automatically extended to 1 April 2021;
* time limits for implementation passed between 23 March 2020 and [28 days after royal assent] are extended to 1 April 2021 if Additional Environmental Approval is granted in respect of the relevant planning permission.

In addition, any deadline for the submission of applications for the approval of reserved matters under an outline planning permission which would otherwise expire between 23 March 2020 and 31 December 2020 is extended to 1 April 2021.

**What is the position in relation to listed building consent?**

All listed building consents with a time limit for implementation between 23 March 2020 and 31 December 2020 will be extended to 1 April 2021. Listed building consents will not be subject to a requirement to obtain Additional Environmental Approval.

**What does an applicant need to do for permissions or consent which are due to lapse between [28 days after royal assent] and 31 December 2020?**

These time limits will be extended automatically to 1 April 2021. The applicant will not be required to take any further action in order for this to take effect.

**How can an applicant confirm that permission or consent has been extended?**

Should an applicant want written confirmation of the extension to the commencement date, they should contact the relevant local planning authority to which the permission relates.

Local planning authorities should work constructively with the applicant to provide written confirmation of the extension to the commencement date and aim to provide a response as quickly as possible so that applicants have the certainty to carry out development lawfully.

In cases of doubt, an applicant may apply for a certificate of lawfulness of proposed development under section 192 of the Town and Country Planning Act 1990.

**Will the time limits for implementation be extended?**

The Secretary of State has the power to extend both the eligibility date for permissions and consents (31 December 2020) and the new time period for implementation (1 April 2021.) This is to provide flexibility in the event the impact of the coronavirus continues. At present, there are no plans to amend these dates.

**When is an Additional Environmental Approval required?**

A planning permission with a time limit for implementation between 23 March 2020 and [28 days after royal assent] will only benefit from the statutory extension to 1 April 2021 where Additional Environmental Approval is granted by the local planning authority (or deemed to be granted).

**Who can apply for an Additional Environmental Approval?**

An application for Additional Environmental Approval can be made by or on behalf of any person with an interest in the land to which the relevant planning permission relates.

**Is there a fee to apply for an Additional Environmental Approval?**

There is no fee required for an application for Additional Environmental Approval.

**How should an application for Additional Environmental Approval be submitted?**

Applications must be made in writing and submitted electronically to the relevant local planning authority. To help applicants, local planning authorities should specify an address for the purposes of applications for Additional Environmental Approval and make this clear on their websites. This could be, for example, an email address or a webpage. Authorities should ensure that any address specified is capable of receiving supporting material.

The application must specify the date which it has been sent and provide sufficient information to allow the local planning authority:

* to identify the relevant planning permission and condition in respect of which it is made; and
* to determine whether Additional Environmental Approval should be granted.

**What information does an applicant need to provide to enable a local planning authority to determine whether Additional Environmental Approval should be granted?**

Applicants should provide details of:

* The planning permission to which the application relates
* The condition(s) which set out the time limit(s) for implementation
* Any condition(s) or other agreements which relate to environmental mitigation or enhancement measures
* Whether the original permission was subject to an Environmental Impact Assessment and/or a Habitats Regulation Assessment, or screening for either type of assessment.

If the original planning permission was subject to one or both of these assessments, or screening for either, applicants should also provide details of:

* The original assessment(s) or screening(s) and a summary of the key findings
* Information on any mitigation measures secured to address environmental effects, and the progress toward delivering these measures
* An environmental report containing a reasoned explanation of why in the applicant’s view there have been no changes to environmental circumstances which would make the original screening or assessment out of date. For example, it may be appropriate to include:
  + an analysis of any further committed development proposals which may affect the assessment of cumulative effects, and why in the applicant’s view this does not make the original assessment out of date
  + a description of any changes to the factual circumstances of the proposed development, such as a new environmental designation, new environmental information or other changes of circumstance, and an analysis of why in the applicant’s view this does not make the original assessment out of date
* Any other relevant information which would in the applicant’s view support the case that the previous screenings or assessments remain up to date.

If the original planning permission was granted without the need for an Environmental Impact Assessment or a Habitats Regulations Assessment, applicants should provide a brief explanation of why they consider it remains the case that neither of these assessments would be needed if an application for planning permission was being made now.

If the original planning permission was granted without the need for screening for an Environmental Impact Assessment or a Habitats Regulations Assessment, but an applicant thinks that screening might be needed if an application for planning permission was being made now and that the screening would show that no substantive assessment was required, then it should provide sufficient information to enable the authority to undertake screening within the 28-day period.

**Is there a prescribed form for an Additional Environmental Approval application?**

There is no prescribed form. Applications should be submitted electronically to the local planning authority via the address specified by them for this purpose and provide the required information as set out in this guidance. Applications should be clear and complete to allow authorities to deal with them as efficiently and swiftly as possible.

**What should a local planning authority consider when assessing an application for Additional Environmental Approval?**

The purpose of the Additional Environmental Approval consent route is to ensure that there have not been any changes since the original consideration of Environmental Impact Assessment and Habitats Regulation Assessment which would make that consideration out of date. Local planning authorities should consider the information submitted by the applicant and take into account any other information available to them. This may include seeking the views of statutory consultees where appropriate (as set out below).

Additional Environmental Approval should be granted for a development where the authority is satisfied either:

(a) that, if an application for planning permission were made now, the development would not need Environmental Impact Assessment or Habitats Regulation Assessment, or

(b) if either or both assessments would be required, they had been undertaken for the grant of the planning permission originally and they remain up to date.

Local planning authorities should also consider whether the original application would now require any additional Environmental Impact Assessment or Habitats Regulations Assessment due to changes to environmental circumstances, designations, information or other matters which would make the original screening or assessment out of date.

If a development did not need assessment originally but might do now, the authority should undertake a screening exercise to decide whether assessment would now be required. If the screening shows that assessment would be required, then Additional Environmental Approval must be refused.

If an authority does not have enough information to conclude that both the EIA requirement and the habitats requirement are met, then it should refuse to grant the Additional Environmental Approval.

**Should an applicant provide a shadow or informal Habitats Regulation Assessment with their application?**

An application for Additional Environmental Approval should not require any additional Habitats Regulations Assessment as the local planning authority is only considering whether Environmental Impact Assessment or Habitats Regulation Assessment are required and, if so, whether the original assessments are still relevant and up to date. If additional assessment is required, then this is an indication that the previous assessment does not remain up to date, with the result that the local planning authority should refuse Additional Environmental Approval and a new planning application will be required.

Where an applicant anticipates that the development to which the Additional Environmental Approval relates would be likely to have a significant effect on a Habitats Site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of that site, the application should be accompanied by sufficient information to demonstrate that the previous appropriate assessment remains up to date.

As part of this process, applicants and local planning authorities may need to consider the implications of recent legal judgments, including [People over Wind.](https://www.gov.uk/guidance/appropriate-assessment#what-are-the-implications-of-the-people-over-wind-judgment-for-habitats-regulations-assessments)

Applicants can obtain advice on this from Natural England (see below).

**When should a local planning authority grant Additional Environmental Approval?**

Local planning authorities will need to consider whether, if planning permission for the same development were being granted now, an Environmental Impact Assessment and/or a Habitats Regulations Assessment would be required.

This is comparable to the existing situation where a local planning authority has to consider whether an earlier screening decision needs to be re-considered, or consider conducting a Habitats Directive article 6(2) review where the appropriate assessment conducted might not have fully met all the requirements of article 6(3), or consider whether a post-application change to a proposed development (for example, by way of non-material amendment, or through details submitted pursuant to a condition) creates a requirement for further screening or assessment under the relevant Directives. These are informal assessment procedures local planning authorities are already required to undertake to ensure compliance with the Directives.

If neither of these would be required, Additional Environmental Approval should be granted.

If either or both of these would be required, the local planning authority should note whether the original grant of permission was subject to these assessments (or either of them as relevant). If it was, then the local planning authority should consider whether those assessments remain up to date.

If the requisite assessments do remain up to date, then Additional Environmental Approval should be granted.

If the requisite assessments are no longer up to date, or if either or both of the assessments were not carried out on the original grant of permission (but would now be required), Additional Environmental Approval should be refused.

**Should reasons be given following a decision to refuse or grant Additional Environmental Approval?**

Local planning authorities should set out the reasons for their decision to either grant or refuse an application for Additional Environmental Approval.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Position if PP were being granted now ►** | **No EIA or HRA required** | **EIA only required** | **HRA only required** | **EIA and HRA required** |
| **Position at time of original grant of PP ▼** |
| **No EIA or HRA carried out** | Grant AEA | Refuse AEA | Refuse AEA | Refuse AEA |
| **EIA only carried out** | Grant AEA | Grant AEA if EIA remains up to date, otherwise refuse | Refuse AEA | Refuse AEA |
| **HRA only carried out** | Grant AEA | Refuse AEA | Grant AEA if HRA remains up to date, otherwise refuse | Refuse AEA |
| **EIA and HRA carried out** | Grant AEA | Grant AEA if EIA remains up to date, otherwise refuse  No need to review HRA | Grant AEA if HRA remains up to date, otherwise refuse  No need to review EIA | Grant AEA if both EIA and HRA remain up to date, otherwise refuse |

**What are the timescales in which a local planning authority should determine an application for Additional Environmental Approval?**

Applications should be determined by the local planning authority within 28 days from the sending of the application.

**Can a local planning authority extend the decision timescale?**

Applicants and local planning authorities can agree an extension to the 28-day period, but the total of the extension should not exceed 21 days in order to ensure that decisions are made as quickly as possible. Any such agreement must be in writing.

**What happens if a local planning authority does not make a decision within the timescale?**

If the application is not determined in the 28-day timescale (or, where the applicant and local authority have agreed in writing to an extension of not more than 21 days, the timescale as extended), the Additional Environmental Approval is deemed to be granted. If an application cannot properly be considered within the extended timescale, the authority should refuse the application so that there is not a deemed grant of approval.

**What should I do if there has been a change of environmental circumstances since the original permission?**

If it is clear that there has been a change in the environmental circumstances of the development which would make the previous Environmental Impact Assessment or Habitats Regulation Assessment out of date, the Additional Environmental Approval should be refused, meaning that the planning permission would not be extended. In these circumstances, there is no point in applying for Additional Environmental Approval and the applicant would need to submit a new planning application if they wished to commence the development.

**What should a local planning authority do if sufficient material is not provided?**

The legislation requires that sufficient information be provided with the application to allow the local planning authority to reach a decision as to whether Additional Environmental Approval should be granted. The local planning authority should first form a view on whether it has sufficient information. It should do as soon as practicable after receiving the application.

If the local planning authority considers that insufficient information has been provided, then it should write to the applicant explaining that the application as submitted does not comply with the legislation, and the authority is accordingly unable to entertain the application, unless and until sufficient information is provided.

If the applicant then submits further information to the local planning authority, such that the information submitted as a whole is sufficient, then the local planning authority should go on to determine the application. In this case, the determination period (28 days or as extended by agreement) will only begin to run from the date on which sufficient information was sent.

**Can an applicant submit additional material to supplement an application for Additional Environmental Approval during the determination period?**

Applicants should ensure that all material which is likely to be relevant is included within the application for Additional Environmental Approval.

Further substantive information should not be submitted during the determination period. The local planning authority is entitled to sufficient information at the start of the 28-day period. If during the determination period it becomes apparent that the local planning authority cannot determine whether the EIA and Habitats requirements are met without further substantive information from the applicant, the authority should refuse Additional Environmental Approval. An applicant may then make a new application for Additional Environmental Approval containing further information so that the authority can deal with it in a fresh 28-day period.

**Will additional surveys be required? How will they be completed given the current lockdown restrictions?**

It should not be necessary for applicants to carry out any additional on-site surveys. The majority of information for determining whether the original Environmental Impact Assessment or Habitats Regulation Assessment is still up to date can be obtained by reviewing existing surveys and evidence. In some circumstances, it may be that a new desktop survey will assist in demonstrating that the previous Environmental Impact Assessment or Habitats Regulation Assessment remains up to date

If it is felt necessary to submit further substantive environmental information, this is an indication that the previous assessments may not remain up to date. In these circumstances it would be more appropriate to submit a new planning application rather than seek an Additional Environmental Approval.

It should be noted that this legislation does not affect any need to obtain a protected species mitigation licence.

**Do local planning authorities need to consult local communities?**

Local planning authorities will need to make a decision within 28 days (or as extended by agreement). The legislation does not require local planning authorities to undertake any specific consultation. However, within this period, LPAs may if they consider it necessary engage relevant ward councillors and others who they consider will have appropriate expertise.   Any engagement should be clear that the only questions are whether Environmental Impact Assessment or Habitats Regulation Assessment are required and, if so, whether the previous Environmental Impact Assessment or Habitats Regulations Assessment remains up to date.

**Is there a requirement for publicity?**

There is no statutory requirement to publicise applications for Additional Environmental Approval, similar to a discharge of condition or a section 96A non-material amendment.

**What steps should an applicant take to engage with their community?**

There is no statutory requirement for an applicant to engage with the public prior to an application for Additional Environmental Approval being submitted. The process only considers whether Environmental Impact Assessment or Habitats Regulation Assessment are required and, if so, whether the previous Environmental Impact Assessment or Habitats Regulations Assessment is still up to date.

**Do local planning authorities need to consult Natural England, Environment Agency or other statutory consultees?**

There is no statutory requirement for a local planning authority to consult with statutory consultees, though they may do so if they consider it appropriate.  For example, a local planning authority may wish to consult with statutory consultees where there are specific complex issues, but they should ensure that a decision can still be made within the 28-day determination period. Complex issues could arise if environmental circumstances have changed since permission was granted, such as flood risk or groundwater vulnerability has increased, or if recent uses or new information about historic uses have increased land contamination risks.   Local planning authorities should cite the reason for consultation when seeking advice from statutory consultees.

**Should applicants consider using a statutory consultee’s pre-application service before submitting an application for Additional Environmental Approval?**

Applicants are encouraged to consider utilising the paid for services provided by [Natural England](https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals#when-you-can-pay-for-agency-advice) and Environment Agency to address any particular complex issues prior to submitting an application for Additional Environmental Approval.

**Will the decision be taken by officers or a planning committee of elected members?**

This is a matter for the local planning authority. However, given the default requirement for decisions to be made within 28 days, local planning authorities should ensure that their local delegation arrangements facilitate the issuing of a decision within the time limit.

**Should the application and decision be recorded in the Planning Register?**

Yes. Local planning register authorities will be required to update their local planning registers to include applications for and decisions relating to Additional Environmental Approval under these measures.

**Can a local planning authority impose conditions on Additional Environmental Approval?**

No. Conditions may not be attached to the grant of Additional Environmental Approval. The grant of Additional Environmental Approval does not amount to a planning permission. It leads to a statutory amendment of the condition governing time for commencement on the previous planning permission. If new conditions are required in order to make the development acceptable, then Additional Environmental Approval should be refused. In these circumstances, a new planning application would be required.

**Can a local planning authority revise a S106 obligation to mitigate the impacts?**

No. If a local planning authority needs to make changes to a substantive S106 obligation, for example in order to allow a conclusion of no adverse effect on the integrity of a European site, then this is an indication that the previous Environmental Impact Assessment and/or Habitats Regulations Assessment does not remain up to date, and Additional Environmental Approval should therefore not be granted.

**How long will the new Additional Environmental Approval route be in place?**

Applicants will be able to apply for Additional Environmental Approval up until 31 December 2020.

No Additional Environmental Approval may be granted or deemed to be granted after 31 December 2020 (except on an appeal lodged on or before that date).

This means that, in order to be certain that a decision to grant or refuse Additional Environmental Approval will be made one way or the other (or that failing that Additional Environmental Approval will be deemed to be granted), applicants should submit applications no later than 2 December 2020. In practice, applicants should aim to submit comfortably in advance of that date, to allow time to resolve any issues as to whether sufficient information has been supplied and/or to allow the applicant and local planning authority to agree an extension to the determination period.

Where an application is submitted after 2 December 2020, the local planning authority may still determine the application up to 31 December 2020. But there will be no deemed grant of Additional Environmental Approval if the local planning authority fails to do so. This is because, in those circumstances, there is not enough time for the 28-day period to elapse before 31 December 2020.

**Is there a right to appeal?**

Where a local planning authority refuses Additional Environmental Approval, the applicant has the right of appeal to the Secretary of State under section 78 Town and Country Planning Act 1990. There is no right of appeal against non-determination as, in the event of non-determination, Additional Environmental Approval is deemed to be granted.

Rather than appeal, an applicant may make a new application for Additional Environmental Approval containing further information so that the authority can reconsider the position in a fresh 28-day period.