

Non-material amendments to existing planning approvals

February 2010

Introduction

From 1 October 2009 a new provision under s96A of the Town and Country Planning Act came into force and allows a way for non-material amendments to be made to planning applications. The Government has introduced this provision in order to provide for a formal method of dealing with small changes to approved schemes.

This advice note seeks to clarify to this process as well as setting out the procedures involved.

What is a non-material amendment?

Government guidance about non-material amendments is contained within 'Greater Flexibility for planning permission' (November 2009). However this document does not define what changes may be treated as being non-material. This advice note clarifies what we consider to be non-material.

S96A of the Town and County Planning Act 1990 says the following:

'In deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change, together with previous changes made under this section, on the planning permission as originally granted.'

The four key tests as to the acceptability of a change to an approved scheme under the non-material amendment procedure are:

1. Is the proposed change inconsequential in terms of its scale (magnitude, degree etc.) in relation to the original approval? If so, then three further tests need to be applied as follows:
2. In the planning officer's view would the proposed change result in a detrimental impact either visually or in terms of living conditions?
3. In the planning officer's view would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?
4. In the planning officer's view would the amendment be contrary to any policy of the Council?

If having successfully applied the first test, and the answer to any of points 2, 3 and 4 is 'YES', then the matter cannot qualify as a non-material amendment.

In making an assessment the following factors will also be considered:

- The development, which is the subject of the permission, must not have been completed.
- The proposed change(s) to the permitted scheme must not result in the development falling outside the description of that development as set out on the Decision Notice. (e.g. by seeking to add a pitched roof to an extension described on the planning permission as a “flat roof” extension.)
- The proposed change(s) to the permitted scheme must not contravene any condition attached to the original permission (e.g. by seeking to include a window in a wall where there is a condition on the permission preventing the creation of such a window).
- The proposed change does not require a further restriction (e.g. a condition) to make it acceptable. For example, an amendment seeking to introduce a window, where the window is only acceptable if it must be kept obscure glazed.
- The proposed change(s) would not result in an increase in the height, width or depth of a building;
- The proposed change would have been approved had it formed part of the original application.

The following are some examples of what may **NOT** constitute a ‘non-material amendment’:

- New windows, openings or enlargements that would, in the planning officer’s view result in loss of privacy or living conditions to neighbours.
- Any change that would adversely affect occupiers of a neighbouring property or other third party.
- Any change that would affect a consultation response on the original application.
- An extension to the site boundary (or “red edge” of application site)
- An enlargement (or reduction) of the volume of a new building which represents a material increase (or reduction) in the scale or size of the building or a material alteration in appearance of a building from that which is approved.
- An increase in the height of new building or extension by more than half a metre in the case of a building of two-storeys or more, or 0.2 metres in the case of a single storey building, unless topographical circumstances, issues of scale and relationship to the street scene, or other development plan policies indicate otherwise.
- Any changes to ground level which would in itself constitute an ‘engineering operation’ or would result in potential loss of privacy or visual amenity.

- Any works which in themselves constitutes 'development' requiring planning permission.
- Any change to the external materials, which would adversely affect the character or appearance of the development or erode the quality of that which was originally approved.

This is not intended to be comprehensive and each non-material amendment request must be considered on its merits having regard to all relevant circumstances. It should also be noted that the non-material amendment procedure could be used to seek very minor changes to the planning conditions attached to the original permission.

Listed buildings and conservation areas

The provision for non-material amendments outlined in this protocol only relates to planning permission. There is no equivalent scheme in place for changes to either Listed Building Consent or Conservation Area Consent. For these, the works must be carried out strictly in accordance with the approved scheme or a new application submitted.

How can I apply for a non-material amendment?

Requests for a non-material amendment must be made on three copies of the correct form, accompanied by three sets of relevant drawings and plans which clearly indicate the nature of the amendment(s) requested. The form is available via our website. Electronic submissions can be made via the Planning Portal.

The extent and nature of the proposed amendment must be clearly identified on the plans and drawings accompanying the application form. This can be done either by including sets of both the original and amended drawings, or by superimposing the proposed amendment on those originally approved. In either case, the extent of the amendment must be clearly identified and the drawing reference number should be updated. The use of a highlighter pen, cross-hatching or other notation is helpful. Full specification of materials, colours, sections must be included where appropriate.

If the extent and nature of the minor amendment cannot be easily identified from the submitted material the application will not be made valid until further information/clarification has been received.

Applications can only be made by someone with an interest in the part of the land to which the amendment relates.

Fees

If the amendment relates to a house holder application then the fee is £25. For all other applications the fee is £170. More than one amendment may be sought on the same form and for the same fee.

Notifications

Before the formal application is made to us, the applicant must notify anyone else who owns the land or, where the land comprises an agricultural holding, the tenant of that holding. There is no prescribed form but notification must include an explanation of where the application be viewed (on the councils website) and that they have 14 days to make their written representations to the council (these comments can be submitted on line via our website). The applicant must record who has been notified on the application form.

How will my application be processed?

Under the non-material amendment process, there is no requirement for publicity to be carried out, for consultation to be undertaken or for the identification of unknown other site owners. No consultation will therefore take place with Parish / Town Councils or neighbouring properties. These would have been carried out as part of the original application.

The officer will make an assessment on the basis of the information submitted. If found to be acceptable, the amendment will be agreed by the issuing of a decision in writing within which the amendment will be described and drawings will be identified. We will not reissue the original planning permission. The two documents should be read together.

We are able to impose new conditions or remove / alter existing conditions as part of the decision. You should bear this in mind in deciding whether to submit an application for a non-material amendment.

We have 28 days from the receipt of a valid application to issue a decision, or longer if that has been agreed in writing.

In the event that the non-material amendment is refused or not determined, there is a right of appeal under s78 of the Town and Country Planning Act 1990. It is anticipated that the scope of this appeal will be limited to the proposed change.

Appeals against refusal must be made within 12 weeks (for householder appeals) or six months (for other applications). All appeals against non-determination must be made within six months of the end of the 28-day determination period.

If the extent or nature of the revisions requested exceeds a non-material amendment, the applicant will be advised in writing. Where appropriate, the applicant will be invited to submit a fresh planning application and advised of the likely acceptability of the proposals and any further issues to address.

Contacts

Due to the nature of their work, our planning officers are often out of the office or are unavailable to receive telephone calls directly. However, we do always have a duty officer available during normal office hours to respond to general queries over the telephone.

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