

Protocol for Non-Material Amendments following a grant of Planning Permission



Introduction

From 1 October 2009 a new provision under S96A of the Town and Country Planning Act came into force allowing a Local Planning Authority (LPA), on application, to make a change to any planning permission if it is satisfied that the amendment proposed is non material. It is recognised that amendments can arise from unexpected changes in circumstances or site conditions and the provisions have been introduced by the Government to provide a quick, formal method of dealing with small changes to approved schemes.

This protocol seeks to explain the non-material amendment process and set out the procedures involved in considering changes to assist applicants and promote a consistent approach to the consideration of non-material amendments. Where a change is not considered by the LPA to be non-material a developer may consider the submission of an application for a minor material amendment under other provisions introduced in October 2009 (under Section 73 of the Town and Country Planning Act), where there is an appropriate condition on the original permission. The LPA will invite such applications when appropriate.

Criteria for assessing Non-Material Amendments

Government guidance on non material amendments is set out in “Greater Flexibility for Planning Permissions” (November 2009). It does not define what changes may be treated as being non material as this will depend on the context of the overall scheme. This protocol seeks to provide some guidance on the procedure and how the LPA will assess non material amendments.

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 key test as to the acceptability of an application for a non material change is whether the change is material to any development plan policy. If the answer is ‘no’, three further tests will be applied:

1. Is the proposed change significant in terms of its scale (magnitude, degree etc) in relation to the original approval?
2. Would the proposed change result in a detrimental impact either visually or in terms of amenity?
3. Would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?

If the answer to any of these is 'yes' the proposed change cannot be regarded as non material.

In considering these tests, the following factors may be relevant.

- To what extent does the proposed change relate to a condition on the original planning permission? (e.g Landscaping, parking arrangements, materials).
- Was the matter the subject of any objections or other material representations on the original permission?
- What would be the effect of proposed changes to building position, height, levels, position of windows, materials proposed and/or relationship with any adjoining development?
- What would be the impact on existing trees and any approved landscaping scheme?
- What would be the impact on the amenities of adjoining occupiers?
- Are there any other material considerations identified in the original officer report which should inform the decision?

Clearly in determining any application, the decision rests with the Local Planning Authority and there is a right of appeal if an application is refused. In the absence of any definition of a non-material change, the following examples are intended to give guidance about changes unlikely to be accepted as 'non material'. It is not comprehensive and each non material amendment request must be considered on its merits having regard to all relevant circumstances:

- New or enlarged windows/openings resulting in loss of privacy or amenity to neighbours.
- Change adversely affecting the amenity of the occupiers of a neighbouring property due to a greater visual intrusion, loss of light or feeling of enclosure.
- Change that would conflict with a consultation response on the original application;
- An alteration to the site boundary ('red edge') of application site.
- Change to ground level which itself constitutes an 'engineering operation' or would result in potential loss of privacy or visual amenity.
- Works which are 'development' that would requiring planning permission in their own right.
- The proposal would result in changes to the external details or design of the building or structure (e.g facing materials or roof shape) that would materially alter the appearance of the building.
- The amendment significantly increases the size of any part of the development.
- The height of the building or structure is significantly increased.
- There has been enforcement action taken, e.g non-compliance with approved plans.
- The application description differs significantly from the original application.

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.

Procedure

Requests for a non material amendment must be made on the correct form and accompanied by the relevant drawings and plans which clearly indicate the nature of the amendment(s) requested. Electronic submissions are encouraged and can be made via the Planning Portal.

Applications must be accompanied by the required fee. Please refer to Planning Application Fees with effect from 26 February 2010.

Applications can only be made by someone with an interest in the part of the land to which the amendment relates. If the applicant is not the sole owner of the land they need to serve notice on the others that are. This will ensure the other owners are informed about proposed amendments and that they will have 14 days to make representations.

Under the non material amendment provision, there are no requirements for any of the following:

- submission of a design and access statement;
- ownership or agricultural holdings certificates to be completed (applicant must notify anyone who owns the land);
- statutory consultation or publicity to be carried out.

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. 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 or clarification has been received.

The officer will make an assessment on the basis of the information submitted in line with this protocol. If found to be acceptable, the amendment will be agreed by the issuing of a decision in writing describing the amendment with reference to submitted drawings. A new planning permission will not be issued. The original permission still stands and the two documents should be read together. The LPA may impose new conditions or remove / alter existing conditions as part of the decision.

LPAs 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. 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.