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Planning Guidance:

Approving Non-material Amendments
to an Existing Planning Permission

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1. Introduction

- 1.1 As part of the Welsh Government's programme of measures to improve the planning application process, it has introduced a statutory procedure for approving certain changes – “non-material amendments” to an existing planning permission.
- 1.2 From 1 September 2014 local planning authorities and applicants have to use the statutory procedure detailed in this guide to approve such amendments.

Purpose of the Guide

- 1.3 This guide is intended to assist local planning authorities and applicants, but will also be useful for other stakeholders involved in the planning application process.
- 1.4 It is structured in a question and answer format, providing guidance on the key features and statutory requirements of the procedure.

2. The Procedure to Approve Non-material Amendments

What is the basis of the new procedure?

- 2.1 Section 96A of the Town and Country Planning Act 1990 (TCPA 1990) came into force in Wales on 1 September 2014. The provision in this section of the Act provides the mechanism to approve non-material amendments to an existing planning permission and prescribes some of the operational matters associated with it.
- 2.2 The Welsh Government has also made changes to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) and introduced the Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014. These changes prescribe the application procedure and introduce a fee for their determination.

What does Section 96A of the Town and Country Planning Act 1990 allow you to do?

- 2.3 Section 96A of the TCPA 1990 allows a non-material amendment to be made to an existing planning permission via a simple application procedure to the local planning authority with a quick determination period.

What is a non-material amendment?

- 2.4 There is no statutory definition of a 'non-material amendment'. This is because it depends on a number of factors such as the context of the overall scheme, the amendments being sought to the original planning permission, the specific circumstances of the site and surrounding areas, which will vary from one application to another. What may be non-material in one context may be material in another.
- 2.5 The responsibility for determining whether a proposed change is non-material lies with the local planning authority. It must be satisfied that the amendments sought to the planning permission are non-material in nature and can therefore be determined as an application under Section 96A of the TCPA 1990.
- 2.6 In deciding whether or not a proposed change is non-material, consideration should be given to the effect of the change, together with any previous changes made to the original planning permission. When assessing and determining whether or not a proposed change would qualify as a non material amendment, local planning authorities may wish to consider the following tests:

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- (a)(i) is the scale of the proposed change great enough to cause an impact different to that caused by the original approved development scheme; and,
 - (a)(ii) would the proposed change result in a detrimental impact either visually or in terms of local amenity?
 - (b) would the interests of any third party or body be disadvantaged in planning terms; or,
 - (c) would the proposed change conflict with national or development plan policies?

2.7 The tests are considered a 'starting point' for local planning authorities in their consideration of non-material amendments. There may be other considerations that will identify if a proposed amendment is non-material depending on the circumstances of each case.

2.8 Pre-application discussions will be important to establish whether or not the proposed amendments are non-material in nature and can be determined as an application under Section 96A of the TCPA 1990. This will avoid any possible abortive work by both the local planning authority and applicant. General advice on pre-application discussions is provided in the Welsh Government's 'Practice Guidance: Realising the potential of pre-application discussions'¹.

Making an Application

Who can make an application?

- 2.9 An application can only be made by a person who owns or has a legal interest in the land to which the non-material amendment relates, or someone else acting on their behalf. These are:
- A freeholder.
 - A holder of a lease with over two years remaining (whether as a head lessee, sub-lessee or tenant of an agricultural holding).
 - A mortgagee.
 - Someone with an estate contract (i.e. an option to acquire a legal interest in the land or a contract to purchase the land).

¹ 'Practice Guidance: Realising the potential of pre-application discussions', Welsh Government (May 2012) - <http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/preappguide/?lang=en>

When can an application be made?

- 2.10 An application for a non-material amendment can be made to change any planning permission that has not expired (an extant permission). The amendment can be sought:
- before development has started;
 - while the development is being implemented; or
 - after development is completed.

Is there a dedicated application form for use by applicants?

- 2.11 Yes, there is a dedicated standard application form for making non-material amendments. The application can be accessed through the Planning Portal website www.planningportal.gov.uk or the local planning authority website. Alternatively a printed copy of the application form can be requested from the local planning authority.

What must accompany a Section 96A application?

- 2.12 In addition to completing the standard application form (see paragraph 2.11 above), the application should also be accompanied by the correct fee (see paragraph 2.14-2.17). If necessary, to describe the proposed amendments, the application may also be accompanied by supporting information, such as amended drawings / plans.
- 2.13 A Design and Access Statement is not required to accompany this application. As it is not an application for planning permission the existing Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) provision relating to Design and Access Statements will not apply.

Is there a fee for making an application?

- 2.14 Yes, applications for householder development are £25, while applications for other amendments are £83.

Are there any exemptions to the fee?

- 2.15 Yes, there are two exemptions where no fee is required to make an application under Section 96A of the TCPA 1990.
- 2.16 The first exemption applies to the provision of facilities for disabled people. This exemption applies where the local planning authority are satisfied the *non-material amendment itself* relates solely to the carrying out of operations for the purpose of providing a means of access for disabled persons. This applies to:

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- alterations, extensions, etc to a dwelling house², or operations within the curtilage of an existing dwellinghouse (excluding the erection of a new dwellinghouse) for the benefit of a registered disabled person; and,
 - for the purpose of providing a means of access for disabled persons to, or within, a building or premises to which members of the public are admitted.

2.17 The second exemption applies where the *non-material amendment itself* requires permission by virtue of an Article 4 Direction of the Town and Country Planning (General Permitted Development) Order 1995, or through the removal of permitted development rights through a condition attached to a consent.

Can more than one non-material amendment be applied for on the same form and for a single fee payment?

2.18 Yes, provided they all concern the same extant planning permission (for details on the approval of multiple amendments see paragraph 2.38-2.39).

Can a non-material amendment application be made retrospectively?

2.19 Yes, an application for non-material amendments can be made retrospectively. However, any changes that are made prior to the local planning authority granting approval are undertaken at the applicants' own risk.

Will applications have to be recorded on the planning register maintained by the local planning authority?

2.20 Yes. The DMPWO requires local planning authorities to record details of applications for non-material amendments on the planning register.

Will the local planning authority issue a letter of acknowledgement on receiving an application?

2.21 Local planning authorities should, as soon as reasonably practicable, acknowledge applications; preferably a letter should be sent to the applicant by the end of the next working day. If (after acknowledgment) they consider that the application is invalid, they must as soon as reasonably practicable notify the applicant that the application is invalid.

2.22 If the application is found to be invalid the local planning authority may seek the information required or, if no response is received from the

² For the purposes of Section 96A of the TCPA 1990 a dwelling house is defined as a flat and house used as a single private dwelling and for no other purpose (Article 2 of the Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014).

applicant, after an appropriate period of time return the form and fee (if applicable).

Can this procedure be used to make non-material amendments to listed building or conservation area consents?

2.23 No. This procedure only applies to extant planning permissions.

Can a non-material amendment be made to conditions using this procedure?

2.24 Yes. Section 96A of the TCPA 1990 enables new conditions to be imposed or existing conditions to be removed or altered providing the resultant effect is a non-material change.

Can local planning authorities continue to use their less formal ways of determining non-material amendments?

2.25 No. All local planning authorities must use the standard statutory procedure introduced by Section 96A of the TCPA 1990 for dealing with non-material amendments.

Determining the Application

Will a local planning authority have to undertake consultation / publicity on individual applications?

2.26 As an application made under Section 96A of the TCPA 1990 is not an application for planning permission, the existing DMPWO provisions that relate to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views.

2.27 Given that the changes sought will be non-material in nature, it is not expected that consultation or publicity will be necessary in the majority of cases.

2.28 Where the local planning authority considers consultation is required, it is expected that the local planning authority will target specific third parties who may be affected by the amendment or may assist in determining if it is material. In consideration of who to consult on an amendment, the local planning authority may wish to consider those who were consulted on the original application. Notification of the application, via a site notice for example, is unlikely to be necessary.

2.29 If the local planning authority considers it necessary to seek the views of an interested party, anyone notified must be told that they have 14 days to make representations from the date of notification, after which their representations may not be taken into account.

What notification will need to be given by applicants of their Section 96A application?

- 2.30 An application under Section 96A of the TCPA1990 is not an application for planning permission; therefore, the notification requirements in article 10 of the DMPWO do not apply. There are no requirements for an ownership certificate or an agricultural holding certificate to be provided with the application.
- 2.31 However, it is considered good practice for applicants to notify anyone else who has an interest in the land and would be affected by the non-material amendment. Where the land comprises an agricultural holding they should notify the tenant of that holding.

Can the local planning authority ask for additional information?

- 2.32 Yes. The local planning authority can ask for additional information from the applicant, but only if it is required to help them determine if the proposed amendment is non-material. Any request for information should be proportionate to the extent of change allowed under Section 96A of the TCPA 1990.

What is the time period for the determination of a Section 96A application by the local planning authority?

- 2.33 The DMPWO requires local planning authorities to give notice in writing of their decision within 28 days of receiving an application, or a longer period if agreed in writing between the applicant and the authority. The 28 day time period for determination of the application starts on receipt of the application and not when an acknowledgment letter is issued.
- 2.34 Given that the changes sought through this application procedure should be non-material in nature, they are unlikely to raise any significant issues that would merit such applications to be referred to Planning Committee for determination. In order to ensure timely decisions, local planning authorities must ensure appropriate delegated powers are in place.

What does the local planning authority have to take into account when making their decision?

- 2.35 The local planning authority must have regard to the effect of the change(s), together with any previous changes made to the original planning permission. It must also take into account any representations made by anyone notified by the local planning authority, provided they are received within 14 days of notification (see paragraphs 2.26 to 2.29).
- 2.36 It should also be determined in accordance with Section 38(6) of the Planning Compulsory Purchase Act 2004 – in accordance with the development plan unless material considerations indicate otherwise.

Local planning authorities should, in making their decisions, focus their attention on national or local policies or other material considerations which may have changed significantly since the original grant of permission.

- 2.37 The decision reached by the local planning authority will ultimately establish whether or not the proposed changes have a material effect. In refusing such applications, the local planning authority will therefore deem the amendments to have a material effect. Their decision however will not prejudice subsequent applications that may be made under other existing application routes, such as an application made under Section 73 of the TCPA 1990 for determining minor material amendments (see paragraph 2.52).

What should a local planning authority do when some of the amendments applied for are material and some are not?

- 2.38 Where a local planning authority determines that some of the amendments applied for are material and some are non-material, they may partially approve the application.
- 2.39 Partial approval of an application will only grant approval for those matters which the local planning authority deem non-material.

Issuing a Decision

What is the procedure for issuing a decision?

- 2.40 The decision must be issued in writing to the applicant. There is no prescribed notice for this.
- 2.41 The local planning authority must record details of its decision on the planning register.

What should the decision notice cover?

- 2.42 The decision notice must only relate to the non-material amendments sought and should describe the amendments. Should a local planning authority want to partially approve an application they will need to clearly specify in the decision letter those changes that are deemed non-material.

Is the decision notice a re-issue of the original planning permission?

- 2.43 No. Notice of a local planning authority decision on an application made under Section 96A of the TCPA 1990 forms a self-standing document. It is not a re-issue of the original planning permission which still stands. Both documents should therefore be read together.

Is there a right of appeal?

- 2.44 No. There is no right of appeal to the Welsh Ministers.
- 2.45 In refusing such an application, the local planning authority will deem that the proposed changes will have a material effect. Applicants who wish to challenge a local planning authority's decision will have to consider other procedures such as using other existing application routes – for example submitting an application under Section 73 of the TCPA 1990 to approve minor material amendments (see paragraph 2.52).

Making material amendments

What types of amendments are there?

- 2.46 There are two types of amendments, non-material and material. Non-material amendments are the least significant form of change that can be made and should have no material effect on the planning permission. Material amendments, on the other hand, will have a material effect on the planning permission.

Can a Section 96A application procedure also be used to make a material amendment?

- 2.47 No, Section 96A of the TCPA 1990 cannot be used to make a material amendment to an existing planning permission.

What is a material amendment?

- 2.48 Material amendments are changes to applications that are of greater significance than non-material amendments as they have a material impact on the scheme and area. There are two types of material amendment: minor material and major material.
- 2.49 Taking the definition provided in the research undertaken by Department for Communities and Local Government³, it is considered that a minor material amendment is:

"one whose scale and nature results in a development which is not substantially different from that which has been approved."

- 2.50 Major material amendments are amendments that go beyond a minor material amendment, and significantly alter a previously approved scheme. As they make significant changes to an existing scheme they

³ Department for Communities and Local Government Minor material changes to planning permissions: Options study (July 2009).

can only be made by the submission of new planning application to the local planning authority.

- 2.51 Pre-application discussions with the local planning authority will therefore be important to establish the most appropriate application procedure to pursue when seeking amendments to an existing planning permission. This will avoid any possible abortive work by both local planning authority and applicants. Advice on pre-application discussions is provided in the Welsh Government's 'Practice Guidance: Realising the potential of pre-application discussions'⁴.

Making minor material amendments

- 2.52 If pre-application advice indicates an amendment is material, or following the (partial) refusal of an application under Section 96A of the TCPA 1990, a further application will be required to secure permission for the proposed amendments. There are three routes to undertake such amendments

A- Submission of a fresh planning application

- 2.53 A fresh planning application may be submitted that includes the proposed amendment.

B- Submission of an application under Section 73 of the TCPA 1990

- 2.54 If the amendment is minor material, an application may be submitted under Section 73 of the TCPA 1990 (applications to vary / remove planning conditions). Applicants can achieve this by varying a relevant condition of an extant planning permission.

*C- Submission of an application under Section 73 of the TCPA 1990
(Where the original application doesn't have a relevant condition)*

- 2.55 If the original permission does not have a relevant condition that allows you to apply under Section 73 of the TCPA 1990, it is possible to add this condition through Section 96A of the TCPA 1990 (see paragraph 2.24). This condition can be added as a standalone application, or on your initial non-material amendment application.

- 2.56 As an application under Section 96A of the TCPA 1990 allows multiple amendments to be sought in one application, you may seek to have this condition added alongside your proposed changes. Therefore if the local planning authority deems your amendment material, they may partially approve the application, only adding the relevant condition.

⁴ Practice Guidance: Realising the potential of pre-application discussions', Welsh Government (May 2012) - <http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/preappguide/?lang=en>

2.57 Once the relevant condition is added, you may make an application under Section 73 of the TCPA.