

PROTOCOL FOR NON-MATERIAL AMENDMENTS FOLLOWING A GRANT OF PLANNING PERMISSION

1.0 INTRODUCTION

1.1 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 without the need to submit a further planning application.

1.2 The process does not apply to planning permissions where the development has been completed.

1.3 This protocol seeks to explain the non-material amendment process and set out the procedures involved in considering changes to assist applicants. 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 in Section 73 of the Town and Country Planning Act where there is an appropriate condition on the original permission.

2.0 WHAT IS A NON MATERIAL AMENDMENT?

2.1 Government guidance on non material amendments is set out in "Greater Flexibility for Planning Permissions" (2nd Edition October 2010). It does not define what changes may be treated as being non material as this will depend on the context of the overall scheme.

2.2 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.'

2.3 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 Authority's view would the proposed change result in a detrimental impact either visually or in terms of living conditions?
3. In the Authority's view would the interests of a third party or body who participated in or were informed of the original decision be disadvantaged in any way?
4. In the Authority'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, or 4 is YES then the matter cannot qualify as a non-material amendment.

2.4 In considering these tests, the following factors will be relevant.

- The proposed changes to the permitted scheme must not result in the development falling outside the description of the development as set out on the Decision Notice e.g. by seeking to add a pitched roof to an extension described on the Notice as a 'flat roof' extension.
- The proposed change must not contravene any condition attached to the original permission.
- The proposed change should not require a further restriction to make it acceptable (e.g. an amendment seeking to introduce a window which would only be acceptable if it is kept obscurely glazed.)
- The proposed change would not result in any material increase in height, scale, width or depth of a building.
- The proposed change would have been likely to have been approved had it formed part of the original application.

2.5 The decision whether a proposed change qualifies as a non material amendment rests with the Local Planning Authority and there is no right of appeal if an application is not accepted. 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/balconies resulting in loss of privacy or amenity to neighbours;
- Change adversely affecting the occupiers of a neighbouring property;
- Change that would affect a consultation response on the original application;
- An extension to the site boundary ('red edge') of application site;
- Changes to ground level which itself constitutes an 'engineering operation' or would result in potential loss of privacy or visual amenity;
- Works which are 'development' requiring planning permission in their own right;
- Any material increase in height, scale, width or depth of a building.
- Change to external materials which would adversely affect the character or appearance of the development or erode the quality of that which was originally approved.
- Change in house type.
- Change which alters the development significantly from what was described on the planning permission.
- An alteration which would conflict with conditions of the original planning permission.
- Any relevant objections to the original proposal would be compromised by the proposed amendment.
- The change would contravene adopted planning policy.
- The approved footprint / siting of the building would be moved in any direction by more than one metre.
- The change relates to development which has been the subject of enforcement action.

3.0 LISTED BUILDINGS AND CONSERVATION AREAS

3.1 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 Listed Building Consent, Advertisement 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.

4.0 FORM OF THE APPLICATION

4.1 Requests for a non material amendment must be made on the correct form and accompanied by the relevant drawings and plans. 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. 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. Electronic submissions are preferable and can be made via the Planning Portal.

4.2 Applications must be accompanied by the required fee (effective 26 February 2010):

Non material amendment applications in respect of householder application
£34

Non material amendment applications in respect of other developments £234

More than one amendment for each planning permission may be sought on the same form and for the same fee.

4.3 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 require the other owners to be informed about proposed amendments and that they will have 14 days to make representations.

4.4 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 (but see para 4.3 above);

5. ASSESSMENT

5.1 Under the non-material amendment procedure there is no requirement for statutory consultation or publicity to be carried out.

5.2 An assessment will be made on the basis of the information submitted. If found to be acceptable, the amendment will be agreed in writing describing the amendment with reference to submitted drawings. A new planning permission will not be issued although the Authority may impose new conditions or remove / alter existing conditions as part of the decision. The original permission still stands and the two documents should be read together.

5.3 The Authority has 28 days from the receipt of a valid application to issue a decision, or longer if that has been agreed in writing. However every effort will be made to ensure that the majority of applications are determined within the 28 day limit.

5.4 In the event that the non-material amendment is refused or not determined, there is no right of appeal under s78 of the Town and Country Planning Act 1990.

5.5 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 without prejudice of the likely acceptability of the proposals and any further issues to address.