

Practice Guidance Note 2 Pre and Post Decision Amendments

The POS Development Management Practice Project works with a group of local authorities to address issues in development management where there is a lack of published guidance. The group examines the range of approaches across the authorities to identify good practice, and this is drawn together as a practice guidance note. This Note does not constitute a legal opinion and authorities are advised to also consult with their own legal advisors.

Introduction

- 1 Most local planning authorities have until relatively recently operated some form of amendment procedure despite there being no specific legislative power to operate such a system. Authorities procedures were usually very similar to one another for both pre and post decision amendments. However, this situation has changed in recent years. For pre-decision amendments the need to meet performance targets has led to a trend in local planning authorities not accepting amendments and instead either seeking withdrawal of an application or refusing an application, so that any subsequent discussions can take place outside of the performance monitoring regime. For post decision amendments recent court cases have left many local planning authorities unsure as to whether they should continue to offer such a service. The Planning White Paper has indicated that the government may clarify the situation through legislation in due course. Until then, this Practice Guidance Note may be of assistance to authorities.
- 2 Local planning authorities seek to balance the needs of the applicant and the need to meet performance targets with the overall objective of ensuring that development does not have an adverse effect upon neighbours or the wider environment. It is therefore considered good practice for case officers to be able to enter into discussions about amendments at key stages of a development proposal but this must be done in a well managed and controlled way. This Practice Guidance Note is designed to give authorities practical help in balancing these competing objectives. However, effective pre-application discussions represent one of the most effective ways of avoiding the need for amendments to submitted schemes.

Published procedures

- 3 An authority's procedures regarding all forms of minor amendment need to be clearly laid down in a procedure note, which has been adopted and published and which is widely available to members of the public, agents and developers. This will help ensure consistency between officers, create transparency and help prevent complaints of inconsistency about the service.

Pre Decision Amendments

- 4 Amendments to submitted planning applications can help to deliver better overall developments or achieve approvals where otherwise a refusal would be necessary. In order to do this without affecting performance it is necessary to target those applications where negotiation and an amended scheme will deliver significant results. Similarly, it is important to limit negotiations where the application is heading for a relatively straightforward approval or refusal. Therefore, authorities need a clear approach when identifying those applications where amendments could have a positive benefit without adversely affecting performance.
- 5 By adopting a 'triage' system early in the process, applications can be quickly categorised by case officers into the following types:
 - applications which can be recommended for approval with no/limited negotiation;
 - those applications where the proposal is clearly likely to be refused and no negotiation is necessary and
 - those applications where it is thought that negotiation could deliver significant results.

Ideally the case officer will be able to inform the applicant/agent that the application will be recommended for refusal. However, different authorities have different resources and therefore different approaches to customer care and accordingly it may not always be possible to do this. When informing an agent/applicant that their application is a clear recommendation for refusal this should be done as soon as possible but making it clear that the matter is not open for negotiation. Applicants/agents can be made aware of their options, including withdrawal of the application but authorities should not request withdrawal of an application or prejudice an applicant's right to appeal. Where there have been pre-application discussions and the applicant/agent has been made aware that the proposal is unacceptable there is little point in contacting the applicant/agent to advise them that the application will be refused.

- 6 Applications identified for approval or refusal should be determined as quickly as possible with the minimum of negotiation. Suggested amendments for those applications which are identified by the case officer as needing some negotiation need to be put in writing to the applicant/agent as soon as possible. A clear deadline should be given for receipt of the amended details. If the amendments are not submitted by the deadline or the application is not withdrawn by the applicant, it should normally be refused as it stands.
- 7 In some cases it may be appropriate for the cases officer to concentrate on negotiating an amendment rather than being constrained by an 8 or 13 week deadline. If the authority's procedures are robust then this can occasionally happen without it affecting their overall performance. However, case officers need to actively manage the process and it is not practical or desirable to let applications drift without establishing deadlines or fail to enforce the deadlines they set. If there is a deadline in place there would need to be a good reason why it cannot be met. If the required changes necessitate a long delay in the applicant/agent being able to resubmit amended drawings the officer should consider whether the changes are so significant that they will require a fresh application.
- 8 It is important for the case office to visit the site within the first two weeks of the application being received as valid. The majority of consultation and neighbour notification will have been undertaken immediately the application was confirmed as valid. Therefore, by the end of the third week in the life of the application it should normally be possible to categorise the application and have set out any required amendments, subject to any consultees responses.
- 9 Any deadline for the submission of amended details should take into account whether further consultation is required. Authorities should have a clear approach on when further consultations are required and apply a consistent consultation period. The following are suggested guidelines which authorities can adopt:
 - a relatively minor amendment to the original application, on which consultation has already occurred, especially one resulting in the applicant responding positively to comments from the consultees and/or neighbours, should proceed to a decision without further consultation;
 - to fully reconsult where there is a greater and/or different impact on neighbours;
 - where an amendment proposes an enlargement to the scheme full consultation should be undertaken.
- 10 Authorities should adopt a precautionary approach to consultation and if there is any doubt on a particular issue full re-consultation should be undertaken.
- 11 Authorities must consider whether a proposed change would result in a development that is in substance different from that originally sought. If it is, then a fresh application should be requested and the initial application either refused or withdrawn.

Post Decision Amendments

- 12 There are no legal provisions which enable an authority to accept post decision amendments. Most authorities have however in the past operated a system which either 'approved' amendments to a scheme or more properly gave a developer comfort that it would not take enforcement action if the amended scheme were built. These 'minor amendment' schemes have been seen as a way of allowing the planning system to respond in a reasonable and flexible manner, to small changes to an approved scheme, without seeking a fresh application.
- 13 Recent court cases (*Reprotech*, *Henry Boot* and *Sage* in particular) have clarified matters. The courts have held that if there are statutory mechanisms in place to achieve something then they should be used and the matter not resolved informally between the LPA and developer. From this has developed the notion that minor amendments are no longer permissible and if a development is not built in accordance with the approved drawings it is unauthorised with the consequential loss of any planning conditions.
- 14 Nevertheless, there still exists the possibility that an authority can agree a minor revision to a planning permission which would not take it outside the scope of the original permission. If there is any doubt as to whether or not a revision would do so, the authority should adopt a precautionary approach and decline the revision. Each authority's published procedures with regard to such amendments should make it clear that this discretion rests with the authority.
- 15 Authorities should make it clear in their adopted procedures as to what will normally take a development beyond the scope of a permission and require a fresh application. The following provides some examples:
 - Resiting of buildings
 - Significant increase in the volume of a building
 - Significant increase in the height of a building
 - Changes to the site area
 - Changes which conflict with a condition
 - Additional or repositioned windows/doors/openings
 - Changes which alter the nature or description of the development
 - New works or elements not part of the original scheme
 - New works or elements not considered by any Environmental Statement submitted with the application
- 16 As a general rule it is considered that if an amendment warrants re-consultation, it should not be regarded as minor and therefore not considered without a fresh application.
- 17 It is good practice for proformas to be used wherever possible. It is recommended that applicants use a standard form to request an amendment as this will help to ensure all the necessary information is submitted. Any request for an amendment should be made in writing and accompanied by appropriate drawings which clearly detail the changes that are sought. Case officers should use a standard form to set out the details of the changes and the reasons why they should be agreed or rejected. The case officer's 'report' should be signed off by whichever officer is authorised to sign off delegated reports.
- 18 Letters sent to developers confirming that in the authority's opinion the changes do not fall outside the scope of the permission should clearly list the alterations to which the authority is referring.
- 19 Good practice shows that authorities should establish a clear timescale for this work and include this within their guidance notes. A period of 21 days normally gives sufficient time for it to be undertaken without unduly impinging on case officers' other commitments. A 14 day period might inadvertently lead to this work being given a greater priority than 'live' applications for which a fee has been paid. (See paragraphs 20 and 21 below on charging for post decision amendments.)

Conditions

- 20 Some authorities have taken to appending the following to the end of their conditions: *unless otherwise agreed in writing by the local planning authority*. Whilst this might be seen as a mechanism for being able to introduce minor amendments, the same considerations apply to permissions and conditions without this clause. Accordingly, if the changes are of significance then they risk taking the development beyond the scope of the original permission regardless of the conditions. It is particularly important where the authority is dealing with an EIA development that changes do not extend the permission beyond the scope of the permission or the considered impacts of the development.

Charging

- 21 Some authorities have taken a decision to charge for providing a post decision amendment service. The basis for this is the Local Government Act 2003, which enables authorities to levy a charge for discretionary services. Any decision to charge for this service should be taken by the appropriate committee and information about the charges should be made widely available, including on the authority's website and fee sheets.
- 22 Any charges levied should cover the necessary costs incurred by the authority and should not seek to make a profit on the work involved. It may therefore be appropriate to have separate fees for different types of development e.g. householder/minor and major developments or a percentage of the original fee paid; although authorities should bear in mind that not all applications command a fee. It is open to the authority to choose to refund the fee if a fresh planning application is required, but any fee for a fresh application cannot be waived. Pre-submission discussions and a clear guidance note on an authority's procedures for dealing with amendments should avoid the need for many requests to be rejected. Authorities might choose to deal with requests that are subject to a fee in a shorter timescale than might otherwise be the case.

Delegation

- 23 The authority to determine post decision requests should be delegated to officers and included with the authority's formal scheme of delegation. It should be made clear whether minor amendment decisions can be taken by officers in all cases, or whether for those applications determined by the planning committee any request for an amendment has to be taken back to the planning committee. In order to meet the objectives of offering a service which can react to minor on-site changes quickly and effectively it will normally be appropriate for all minor amendment requests to be delegated to officers as long as clear procedures for dealing with requests have been adopted and are in place.

The project

The Development Management Practice Project is sponsored by the Planning Officers Society, and is run on its behalf by POS Enterprises and Trevor Roberts Associates. The local authorities involved in the project are Arun, Ashford, Barnsley, Bournemouth, Broadland, Caradon, Chiltern, Hambleton, Hampshire, Lichfield, Portsmouth, Redcar & Cleveland, Richmond, Suffolk, Swindon and Wycombe. The project will run for a year in the first instance, from April 2007 to March 2008. Finalised guidance is published on the POS web site and circulated direct to Society members.