Implementation Planning Advisory Group

Guidance on Non-Material Amendments and Minor Material Amendments

April 2012
Non-Material Amendments and Minor Material Amendments

1) Non-material Amendments

Legislative provisions

Non-material Amendments (NMAs) are given legislative effect by S.96A Town and Country Planning Act 1990 (brought into force on 1 October 2009) via the commencement of s.190 of the Planning Act 2008. This stipulates:

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

There is no statutory definition of ‘non-material’ because it’s dependant on the context of the overall scheme (i.e. what is non-material in one case may be material in another). The LPA must be satisfied that the amendment sought is non-material before the grant of an application under s.96A. The term non-material is also likely to cover many schemes that could have previously been classed as de-minimus.

Submission

An application for an NMA may be applied for by or on behalf of a person with an interest in the land. This definition includes a freeholder, a holder of a lease of over 7 years (including sub-lessee), a mortgagee, or someone with an estate contract. If someone has an interest in only part of the land, the application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

The new application form is presently only available in a printable format at: [www.planningportal.gov.uk/uploads/1app/forms/Form034_england_en.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/Form034_england_en.pdf).

The cost of a Minor Amendment is £170.00, and more than one NMA can be applied for on the same form for a single fee. No Design & Access Statement is required to be submitted with the application. Before the application is made, the applicant must notify anyone who owns the land and the tenant of an agricultural holding, giving 14 days to make representations (in accordance with Part 4F of the GDPO). The applicant must record who has been notified on the application form.

Processing

When a valid application is received by the Planning Authority, an NMA will have to be recorded on the Planning Register. The determining authority should then write to the applicant confirming that the application has been
received, and that the applicant should receive a decision within 28 days, unless a further timescale is agreed in writing. An application under s.96A is not an application for planning permission therefore existing GDPO provisions relating to consultation and publicity do not apply. The Planning Authority has discretion in whether and how they choose to inform other interested parties. However, generally an NMA will be of a scale that there would not need to be any publicity done for the application. It will be for each individual authority to decide whether they wish to notify the local member, but the nature of an NMA would suggest this is not necessary.

Due to the discretionary nature of consultation, authorities may wish to adapt their existing application processing forms (for example by adding a further category of application) rather than create an entirely new form. As each application will have its own application number from the planning register, existing back office systems should be capable of dealing with the new applications, but may need some adaptation for the discretionary publicity requirements.

**Decision making**

In assessing the application the Planning Authority must have regard to the effect of the change, together with any previous changes made under this section, and take into account any representations made by anyone notified provided they are received within 14 days of notification. A decision should be made solely as to whether the proposal is or is not a minor amendment. Suggested formats for reports and decision letters are shown below in templates 1 and 2.

As it is not an application for planning permission, s.38(6) of the Planning Act 2004 does not apply. However, conflict with a reason for a previous decision may mean that the amendment is material. A list of possible procedural considerations (and other operational considerations) is detailed below in section 3. Planning Authorities are advised to create their own lists to aid consistency within the authority.

The Planning Authority must give the applicant notice in writing of their decision within 28 days of receipt of the application or such longer period as may be agreed. It is not a reissue of the original planning permission (which still stands); the two documents should be read together. However, the Planning Authority has the power (a) impose new conditions; and (b) to remove or alter existing conditions through this process. Although it is not an application for planning permission, the guidance states that there is a right of appeal under s.78 of the Town and Country Planning Act 1990. Notwithstanding this statement, it is worthy of note that the Government has indicated in a letter to Chief Planning Officers dated 9th September 2010, that revised guidance will be issued in respect of Appeals for NMA decisions. This guidance will be revised to reflect that once the government guidance is issued.
2) Minor-Material Amendments (MMAs)

Definition

The suggested definition of a Minor Material Amendment is: one whose scale and nature results in a development which is not substantially different from the one which has been approved.

Amended consultation requirements for applications under s.73 of the Town and Country Planning Act 1990 were brought into force on 1 October 2009, through the Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (SI 2009 No. 2261). This vehicle will often allow the consideration of an MMA under section 73, subject to there being a condition listing the approved plans, or the permission including a condition which is suitable for modification. If there is no suitable condition then it is not possible to use this procedure.

In order to facilitate the use of s.73 to make minor material amendments, in future decisions Planning Authorities are advised that new planning permissions should generally impose a condition listing the approved plans (although changes may be sought in relation to any condition).

Processing

A s.73 application is considered to be a new application for development consent under the 1999 EIA Regulations. Where the development is listed under either Schedule 1 or 2 to the 1999 EIA Regulations, and satisfies the criteria or thresholds set, it would require a Planning Authority, if requested, to carry out a new screening exercise and issue a screening opinion on whether an EIA is necessary. Where an EIA was carried out on the original application, changes to the ES may or may not be necessary.

The amendment to the GDPO gives LPAs discretion on which statutory consultees should be consulted. Art 10B(2) of the GPDO states: Before granting planning permission on an application in relation to which this article applies, the local planning authority must consult such authorities or persons falling within a category set out in the table in article 10 as the local planning authority consider appropriate. All other publicity requirements remain unchanged. However, where the application is an EIA scheme, LPAs do not have any discretion to which bodies they consult under Art. 10.

It is likely that existing application processing forms and back office systems will be sufficient to process these applications without significant amendments.

Decision making

The application needs to be determined in accordance with s.38(6) of the PCA. Where an application under s.73 is granted, the effect is the issue of a fresh grant of permission. A decision notice describing the new permission
should be issued, setting out all the conditions pertaining to it. As a s.73 application cannot be used to vary the time limit for implementation, this must be consistent with the original permission;

If sequential applications are made for both a variation of condition and extension to the time limits, the extension should be applied for first, as a successful s.73 application would result in a new permission which would not have been extant on 1 October 2009 and which therefore could not be extended.

3) Definition of Non-Material Amendments – Likely appendices in revised Good Practice Guide?

Whether a proposed amendment is a non-material amendment would be case specific, due to the individual nature of each development. Each scheme and proposed amendment will need to be considered on its own merits. The suggested criteria below are not meant to be definitive.

**Procedures**

Each authority will have its own delegation procedures in place for considering proposals. There are certain circumstances where a proposal could conflict with these processes and procedure, which would mean that a proposal could not be classed as a NMA. The most likely circumstances are as follows.

- Changes that would result in the development becoming contrary to policies of the development plan or national planning policy guidance/statements;
- Changes that would impact upon something that the officer regards as one or more important material considerations in the determination of the application;
- New works or elements not considered by and Environmental Statement submitted with a planning application;
- Development which would require consultation with consultees other than the District/Borough Council;
- Alterations which would increase the impact of the development related to a material consideration that was the subject of at least one planning objection or was raised as a concern by one or more member of the planning committee;
- Development which conflicts with the provision of any other planning condition;
- A non-material amendment has already been made which with the proposed amendment would go beyond any of the above criteria;
- The proposal has been agreed following an appeal;
- Raises new planning issues/material considerations that have not previously been considered;
- Changes which alter the nature or description of the development;
Where enforcement action has been taken in respect of compliance with approved plans.

There are also physical or operational aspects to a development that will be important although much more case specific. A list of possible criteria used by some Planning Authorities and from Appeal decisions is listed below and should be used where possible to aid compilation of an indicative list.

**Built Form and Environmental Characteristics**

- A development is likely to be re-sited by more than 0.2m in any direction where neighbouring buildings are in close proximity and look onto the development;
- A building is likely to be re-sited by more than 0.5m in any direction where neighbouring buildings are over 20m away and/or look onto the development; or, any amendment which would move a building off the approved footprint by more than 25%;
- Any amendment which creates built form forward of the front/principal elevation;
- Any increase in the approved site area or floorspace greater than 3% or increase in the volume of a building by more than 6%;
- Additional doors and windows that would discernibly affect the external appearance of the development;
- Additional or altered doors or windows that could harm the privacy or visual amenity of the nearby properties;
- The relocation or replacement of plant (e.g. air conditioning, extractor outlets or boiler exhausts) that would materially affect the appearance of the development or increase noise level to a level perceptible to the human ear;
- Changes that would adversely affect the design of a development (including the loss of details or use of lesser quality materials);
- Any amendment which relates to the provision of two or more new pieces of development;
- Any amendment which would reduce the root protection area to or result in compromising or the loss of a tree considered to be of significant amenity value;
- The development would impact upon the character or appearance of a Conservation Area or the setting of a listed building;
- Development which results in a loss of parking, manouevring access facilities so that it fall below a maximum standard;
- any sub-division of floor area or site area to create a new unit or site operation;
- Any operation that would result in conflict with any planning condition or reason for imposition;
- Any reduction in the size of the development by more than 3% of the floorspace or 6% of the volume;
- Any alteration to the development which result in a discernable increase in pedestrian or vehicular traffic;
Mineral Extraction and Waste Disposal Operations

These criteria below could be more suitably for Waste Disposal Operations and Mineral Operations:

- Increases in the height/size/volume of a building or plant/machinery that would increase the development beyond those criteria referred in bullets 1 – 3 and 5 of the previous list;
- Changes to the extraction or filling area which would increase volumes to such a point that other operational conditions need to be varied;
- Changes to the types of material to be used for infilling that would give rise to differing land use impacts than those approved;
- Changes to the types of material extracted that would result in different processing requirements to those already permitted at the site;
- Changes to any plant and machinery or processing operations that would increase the noise level beyond permitted limits;
- Changes to any plant and machinery or processing operations that would require an amendment to any agreed scheme to mitigate environmental impacts;
- Any alteration to the development which result in a material increase in pedestrian or vehicular traffic;
- Any alteration to the development which result in a material increase in pedestrian or vehicular traffic;
Templates for Decision Letters for Non-Material Amendments

Template 1: Report

Original planning permission to which the proposal relates:

Description of proposed amendment:

Amendment reference number:

Consultees

Assessment of proposal:
(including reference to development plan policies, previous material considerations, appearance and impacts of development).

List any further conditions and the reason for their imposition:

Case Officers Name: .....................
Signature: ......................
Date: .........................

Managers Signature:....................
Date:............................
Template 2: Decision Notice

Dear Sir/Madam,

RE: NON-MATERIAL AMENDMENT TO PLANNING PERMISSION
(ORIGINAL REF NO AND DESCRIPTION ) – SITE ADDRESS

I am writing to you in regard of your application for a Non-Material Amendment dated XX/XX/XX in respect of the above proposal.

Your application (ref. no. XXXX/XXXX/XX) is set out in the application form dated XX/XX/XX and the plans/drawings numbered XXXX and the accompanying statement dated XX/XX/XX. This application requests the following amendments to the original permission:

[LIST AMENDMENTS]

Your application has been considered in accordance with s96A of the Town and Country Planning Act. This requires that in making a decision on whether a proposal constitutes a Non-material amendment, the Local Planning Authority should have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

There are no objections to the amendment(s) which may be construed as complying with the original planning permission. Accordingly I can confirm that your proposed amendments (ref. no. XXXX/XXXX/XX) are hereby approved. This letter and the referenced plans, drawings and application should be kept and read alongside you previously issued Decision Notice to original application ref. XXXX/XXXX/XX. Please be advised that this letter does not convey any additional approval which may be required under other legislative regimes (e.g. Building Regulations or Environmental Permitting).

Managers signature:
Date: