

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT:

WELSH GOVERNMENT CONSULTATION – NON-MATERIAL AMENDMENTS TO PLANNING PERMISSIONS

Purpose of Report

1. **To inform members of a Welsh Government (WG) consultation in respect of proposed changes to introduce a statutory procedure for approving non-material amendments to existing planning permissions.**
2. **To seek the support of the members for the proposed response to the consultation document**

Background

3. Local Planning Authorities have historically dealt with “minor” amendments (i.e. small changes to approved planning applications) on an informal basis, depending on the type and complexity of those amendments. There is currently no legal procedure for such amendments to be made and authorities have adopted a range of approaches to this; some refusing any changes at all and others approving those that are considered to not alter the overall scheme or cause any significant deviation from the original scheme. A legal case in recent years has however held that there is no mechanism by which authorities should allow such amendments and to do so is technically ultra vires. There is a general consensus however, that the ability to allow small changes enables flexibility and simplifies bureaucratic processes for making changes that have no overall impact on the original scheme.
4. The consultation, the subject of this report, seeks views on the proposal to introduce a statutory procedure for approving non-material amendments to existing planning permissions. The consultation only relates to planning applications and is not applicable to other types of permission (i.e. listed building or conservation area consent). Responses are invited by the 15th March 2013 and the consultation response is required to a number of specified questions. The consultation includes a draft guide to approving non-material amendments and a Partial Regulatory Impact Assessment. It is understood that a second consultation in relation to minor material amendments is likely to be sent out shortly.
5. The current arrangements for amending planning permissions are set out in Section 73 of the Town and Country Planning Act 1990 which allows for applications to be made for minor material amendments to existing permissions. This approach depends on the existence of a relevant condition to amend and also does not provide a specific provision for other non-material amendments to be sought. With no statutory process for such amendments a varying range of

approaches to non-material amendments has been carried out across Wales. This was identified as an issue in the recent “Study to Examine the Planning Application Process in Wales”¹. Furthermore, a legal case in 2003 held that development must be carried out entirely in accordance with the approved plans and any deviation would be unauthorised. This has led to a more stringent approach to amendments by many authorities.

6. The Welsh Government therefore considers it necessary to introduce a legal basis for making non-material amendments to planning permissions to provide greater certainty for authorities and applicants whilst allowing some flexibility, certainty and transparency across all authorities. It is the legal basis for making such amendments that forms this consultation.

Main Proposals

7. The main proposal is to introduce the provisions that are set out in Section 96A of the Town and Country Planning Act 1990 (which currently only apply in England). The Act allows a non-material amendment to be made to an existing permission via a simple application procedure. The application would be accompanied by a standard application form, relevant information, a fee (the consultation recommends £25 for a householder application and £166 for any other application) and would be required to be determined within 28 days unless an alternative period is agreed in writing.
8. The Act does not define a non-material amendment and the consultation also does not advocate a definition on the basis that every site context is different. The consultation instead sets out several tests namely:
 - Is the proposed change significant in terms of its scale in relation to the original approved development scheme?
 - Would the proposed change result in a detrimental impact either visually or in terms of local amenity?
 - Would the interests of any third party or body be disadvantaged in any way?
 - Would the proposed change conflict with national or development plan policies?

The consultation advocates the use of the pre-application system to ascertain whether an amendment would be material or not. In the event that the amendment is material, the fallback position is to use Section 73 of the Act as at present. There would be no right of appeal against a decision to refuse an application made under Section 96A of the 1990 Act.

Considerations

9. The WG has provided a standard response form to this consultation and the detailed responses to each question are provided in Appendix A. In summary the introduction of a legal basis for making non-material amendments to existing planning permissions is welcomed due to the existing confusing and inconsistent approach that is currently operating.

10. However, there are concerns at the lack of any definition and the inevitable confusion and lack of transparency that this will lead to. In addition, the list of documents to accompany any application is vague and imprecise, again leading to confusion. The lack of notification is also of concern; whilst the planning officer may deem a matter to be non-material, a third party may have a conflicting view on materiality. Without a definition this is likely to lead to challenges and a lack of trust in the system.
11. The consultation includes a draft regulatory impact assessment which attempts to identify the likely impact on LPA's, businesses and the general public/householders through the implementation of this new legal requirement. This compares the likely costs and benefits of the proposals and also those of a "do nothing" approach.
12. The consultation identifies that the benefits to Local Authorities arising from the procedures will be a quicker and cheaper process to administer and consider than through the submission of a further full application as is required at present. It will also provide a legal basis for making non-material amendments. However, this does not take account of the Section 73 route, which by virtue of the fact that this Authority always applies a condition to require the development to accord with specified plans would always be a simpler route than a further full application for amendment. As such it is not clear that this procedure will offer any further benefits over and above those that Section 73 enables and which could be expanded to cover all non-material amendments as well as material ones.
13. The new procedure will enable a fee to be charged for non-material amendments which historically have not been sought by this Authority as they have been dealt with in a relatively informal manner and did not attract a fee. This will provide an additional income stream to the development management service, although this is difficult to quantify at this time.
14. On balance therefore, whilst the procedure does provide a legal basis for making non-material amendments it is not clear why the existing arrangements under Section 73 could not be merely expanded to allow for non-material amendments with all planning permissions containing a standard condition requiring the development to be carried out in accordance with a list of plans enabling this to be varied if necessary. This would remove the uncertainty for applicants as to whether an amendment is material or not – it would merely require any amendment to be agreed under Section 73.

Recommendation

That the Committee endorses the response to the consultation document set out in Appendix A.

Background Documents

WG Consultation Document – Non Material Amendments to Planning Permissions,
Issued 10th December 2012

¹ Study to Examine the Planning Application Process in Wales, GVA Grimley, June
2010

(Contact Vicki Hirst, Head of Development Management)

Consultation Response Form

Non-material Amendments to Planning Permissions

We want your views on our proposals to introduce a statutory procedure under Section 96A of the Town and Country Planning Act 1990 to approve non-material amendments to an existing planning permission. Your views on a draft guide that provides practical guidance on the use of the proposed procedure are also sought.

Please submit your comments by 15 March 2013.

If you have any queries on this consultation, please email:
planconsultations-b@wales.gsi.gov.uk or telephone Nick Butler on 029 2082 3585 or Hywel Butts on 029 2082 1619.

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Non-material Amendments to Planning Permissions		
Date of consultation period: 10 December 2012 – 15 March 2013		
Name	Vicki Hirst	
Organisation	Pembrokeshire Coast National Park Authority	
Address	Llanion Park Pembroke Dock Pembrokeshire SA72 6DY	
E-mail address	vickih@pembrokeshirecoast.org.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you agree with the identified tests to assist in assessing whether or not a proposed change would qualify as a non-material amendment to be determined under Section 96A of the TCPA 1990? If not, please specify the reasons and provide suggested alternatives.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

Whilst the tests are considered to be appropriate in principle, there is concern that these are open to interpretation. The tests refer to matters such as significant changes, detrimental impacts, and disadvantaged without definition of these terms. The interpretation of these matters will depend on the standpoint of the individual; for example a neighbour may consider an additional window to be significant as it will be detrimental to their amenity, whereas the planning officer may have a different interpretation. It is considered that the tests are likely to lead to further confusion and a lack of transparency which is regrettable when the intention is to simplify procedures for minor non material changes. Clearer direction on a definition of non-material changes is considered to be necessary for effective and consistent application of this proposal.

Q2	Do you agree with the proposed information requirements to support an application for	Yes	Yes	No

	making non-material amendments? If not, please specify the reasons and what information requirements that you considered are necessary.		(subject to further comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q3 (a)	Should a fee accompany an application for making non-material amendments to an existing planning permission? If not, please specify the reasons.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: It is considered that the fee should be applicable to each amendment sought as there is concern that a number of "non-material" amendments on the same proposal could amount to an overall material change to the original application. Furthermore, it is suggested that each permission be subject to a limit on the number of amendments that can be made to avoid incremental changes.				

Q3 (b)	If the answer to question 3(a) is yes, do you agree with the proposed fee level? If not, please specify the reasons and the fee level considered to be appropriate for such an application.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q4	Do you agree with the approach taken to consultation / publicity for non-material amendment applications? If not, please specify the reasons.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: Due to the comments set out in Q1 above, it is considered that notification should be carried out with adjoining properties and those who may have made representations on the original application to ensure that the process is				

transparent and any conflicting views on whether an amendment is indeed non-material can be made.

Q5	Do you agree with the approach taken in relation to notification for non-material amendment applications? If not, please specify the reasons.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q6 (a)	Should a decision on an application for non-material amendments be made within 28 days of its receipt? If not, please specify the reasons and the determination period considered to be appropriate for such an application.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: In view of the comment regarding notification under Q4 above, it is considered that a period of six weeks would be more appropriate to enable representations to be invited and considered.				

Q6 (b)	Is it necessary to introduce a remedy in the circumstance that a local planning authority does not determine an application within the proposed 28 days? If the answer is yes, please specify what remedy is considered appropriate.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: It is suggested that the remedy should comprise a "deemed consent" such as already in place for applications for prior approval unless the LPA agrees an extension of time in writing with the applicant.				

Draft Guide

Q7	Are there any other issues that the draft guide at Annex 1 should cover in explaining the proposed procedure for approving non-material amendments? If so please specify	Yes	Yes (subject to further comment)	No
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what.		comment)	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: The draft guide should take account of the above comments in particular with regard to the need for a definition.			

Draft Partial Regulatory Impact Assessment

Q8	Do you have any comments to make about the draft partial Regulatory Impact Assessment at Annex 2?	Yes	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:			

General

Q9	We have asked a number of specific questions. If you have any related issues or comments which we have not specifically addressed, please use this space to report them:
<p>It is considered that S73 of the Act already provides a process for dealing with non-material or minor material amendments to an existing permission and greater use of this section would negate the need for a further process which only serves to add further complexity and confusion. S73 could be adapted to refer to all amendments (either non-material or minor) with all permissions required to include a condition listing the approved plans to enable this section to be used for amending a permission.</p> <p>The use of Section 73 would therefore require all amendments to be subject to the same process and a fee could be imposed relating to type as is advocated in this consultation. There would be therefore no opportunity for disagreement over whether amendments are material or not as all amendments would be subject to the same process.</p>	

I do not want my name/or address published with my response (please tick)

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : planconsultations-b@wales.gsi.gov.uk [Please include 'Non-material Amendments to Planning Permissions – WG16763' in the subject line]
Post
Please complete the consultation form and send it to: Non-material Amendments to Planning Permissions Development Management Branch Planning Division Welsh Government Cathays Park Cardiff CF10 3 NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-b@wales.gsi.gov.uk Telephone: Nick Butler on 029 2082 3585 or Hywel Butts on 029 2082 1619