

REPORT OF DIRECTOR OF PARK DIRECTION AND PLANNING

SUBJECT: AMENDMENT TO OFFICER DELEGATION ARRANGEMENTS TO INCORPORATE NEW PLANNING PROCESS – APPROVING NON-MATERIAL AMENDMENTS TO AN EXISTING PLANNING PERMISSION

1. Purpose of Report

- 1.1 To propose replacement / amended provisions within the existing officer delegation arrangements to ensure that the process and procedure relating to approving 'non-material amendments' falls within the remit of the approved scheme.

2. Introduction

- 2.1 Section 96A of the Town and Country Planning Act 1990 came into force in Wales on 1 September 2014. The provision provides the mechanism to approve non-material amendments to an existing planning permission via a simple application procedure to the local planning authority (LPA) with a swift determination period of 28 days unless otherwise agreed. The procedure replaces any informal arrangements that an authority might have for dealing with such amendments.
- 2.2 The Authority's existing delegation arrangements provide the Director of Park Direction and Planning and / or the Head of Development Management, or in their absence, the Chief Executive (National Park Officer) with the authority to make decisions on all submissions made under current planning legislation, subject to certain exceptions. The arrangements also make reference to 'working amendments', giving additional authority to consider such matters.
- 2.3 A copy of the existing arrangements is attached at **Appendix 1** (paragraphs 'a' and 'c' refer). Given the introduction of non-material amendments, the scheme needs to be amended to reflect the change in statutory processes. This will mean the inclusion of approving non-material amendments in paragraph 'a' and the removal of the majority of matters listed in paragraph 'c'. The full details are set out in the recommendation below.

3. Non-Material Amendments

- 3.1 The process of applying for a non-material amendment is a formal procedure. It applies to extant planning permissions but not listed building or conservation area consents. There is no statutory definition of a non-material amendment as

whether or not a change can be considered in this way depends on a number of factors such as the context for the overall scheme, the amendments being sought and the specific circumstances of the site and surroundings, which will vary from one application to another. What may be non-material in one context may be material in another.

- 3.2 The responsibility for determining whether a proposed change is non-material lies with the LPA. 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 Act.
- 3.3 In deciding whether or not a proposed change is non-material, consideration needs to 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 in this way, published Welsh Government guidance (July 2014) advises that LPAs may wish to consider certain tests, such as the scale of the proposed change, whether any detrimental impact would result, either visually or in terms of local amenity and the extent to which any third party would be disadvantaged.
- 3.4 Subject to certain exceptions, such as works required for a registered disabled person, an application for a non-material amendment attracts a fee of either £25 for householder development or £83 in all other cases. It can be made at any stage during the construction process but only by a person who owns or has a material interest in the land and must be on a prescribed form with sufficient detail to depict the change.
- 3.5 Whilst an element of targeted consultation can take place on certain proposals, it is not envisaged that publicity will be necessary in the majority of cases.
- 3.6 In terms of the decision making process, the LPA has the power to approve, refuse or partially approve such an application. The process also enables new conditions to be imposed or existing conditions to be removed or altered. In the case of refusal, it will mean that the LPA considers the change to be material, in which case, a further planning application would need to be submitted, for consideration in the normal way. In the event of an approval, this would be a standalone document, not a re-issuing of the planning permission, meaning that decisions would need to be read together.
- 3.7 The guidance states that because changes sought through this procedure are unlikely to be material, it will seldom be the case that any significant issues are raised, sufficient to warrant the matter being referred to the planning committee. In order to ensure timely decisions, the guidance suggests LPAs have delegated powers in place.

4. Options

- 4.1 The existing delegation arrangements, set out at **Appendix 1**, allow for the consideration of all submissions made under current planning legislation (paragraph 'a'). On this basis, it is arguably the case that authority already exists

to deal with applications for approving non-material amendments. However, the new procedure is not listed and furthermore, the additional section (paragraph 'c') setting out arrangements for dealing with 'working amendments' relates to a procedure that the guidance stipulates is no longer appropriate.

4.2 In summary, the best option would be to amend the existing delegation arrangements to accurately reflect current circumstances.

5. Financial considerations

5.1 There are unlikely to be any significant financial aspects as regards the recommendation itself. However, the changes have resulted in additional fee income for the Authority. The previous process for dealing with working amendments informally was undertaken on a no charge basis.

5.2 Although it is too early to say at this stage what the likely additional fee income might be, over time, since the new procedure came into force on 1 September 2014, there have been 13 applications made, some at £25 and some at £83. This has equated to a total additional fee income of £593. The likely fee income per annum could therefore be in the region of £3000 although it is fair to say that there could also be an increase in the take up rate of such applications. Because of this, fee income could be greater than the current rate suggests.

5.3 Generally speaking, the additional work and officer time involved has proven not to be significant, despite the need for a report and formal decision notice to be generated.

6. Risk considerations

6.1 Planning decisions continue to be made on a regular basis and there are risks associated with the option of doing nothing. The recommended changes would enhance governance arrangements, ensuring that the service can demonstrate proper authority exists for making decisions on such matters.

6.2 Information will be added to the Authority's website explaining the process.

7. Conclusion

7.1 It is considered appropriate to amend the officer delegation arrangements, as recommended below.

8. Recommendation

8.1 That, the existing officer delegation arrangements be amended to read as follows:

a) The consideration and determination of all submissions made under current planning legislation. These include:

Add:

- *Approving applications for non-material amendments made under Section 96A of the Town and Country Planning Act 1990*

c) The consideration of 'Working amendments' (Policy Committee 18/07/2001)

Remove:

- *minor amendments that had become essential because of practical or constructional difficulties which could not have been foreseen (e.g. escape window to meet Building Regulations);*
- *relocation of openings within an elevation that already had openings where that opening was in close proximity to, and at the same floor level as, that originally approved;*
- *minor re-siting (within a metre) of a dwelling in a single plot, provided that the change resulted in no greater overlooking of neighbours' properties;*
- *changes to landscaping details;*
- *reduction in the size of a proposed extension to which there was no objection;*
and
- *minor alterations in site levels which resulted in an increase of ridge height of 300mm or less*

9. Background Documents

9.1 Town and Country Planning Act 1990

9.2 Welsh Government publications

9.3 Constitutional procedures and protocols relating to PCNPA

(For further information, please contact Jane Gibson / Alan Southerby)

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D) PLANNING APPLICATIONS AND RELATED MATTERS

- 1) The following matters are delegated to the Chief Executive (National Park Officer), in the absence of the Director of Park Direction and Planning and/or the Head of Development Management (*exceptions to this are listed under 2 (Exceptions) below*): (NPA 15/03/06)

Where applicants requested that applications be considered by Committee to give them the opportunity to speak at Committee, these requests be refused if that is the only reason given. (NPA 14/10/09)

a) The consideration and determination of all submissions made under current planning legislation. These include:

- Planning applications;
- The imposition of conditions and reasons for decisions on planning permissions;
- Detailed information required by conditions of planning permissions;
- The discharge of conditions in relation to applications submitted by Members or officers or their immediate family, where officers or Members are declared as the owners on the ownership certificates, where officers have an interest in the application, by Members who have been Members of the Authority less than 12 months prior to the application, or the application is made on behalf of the Authority. (NPA 5/2/14);
- The formulation of reasons for the refusal of planning applications;
- Applications to develop land without compliance with conditions previously imposed;
- Retrospective applications;
- Listed Building and Conservation Area applications;
- Service of Listed Building Preservation Notice;
- Advertisement applications;
- Applications for Hazardous Substances Consent;
- Minerals and Waste applications;
- Proposals affecting trees covered by a Tree Preservation Order;
- Proposals required to be notified to the L.P.A. under Planning regulations (General Permitted Development Order, etc);
- Applications for Certificate of Lawful Use and Development (CLEUD), and Certificated of Proposed Use and Development (CLOPUD;)
- Applications to vary or discharge Section 106 agreements;
- The revocation or modification of a planning permission;
- Appeals against the refusal of planning permission, conditions of consent, etc;
- Applications for Certificates of Appropriate Alternative Development.

b) The consideration and determination of issues under the Environmental Impact Assessment regime:

- The need for a Scoping Opinion
- The need for a Screening Opinion
- The need for the submission of an Environmental Impact Assessment.
- Engaging public consultation in respect of an Environmental Impact Assessment.
- Consideration of the adequacy of the Environmental Statement

c) The consideration of “Working amendments” (*Policy Committee 18/07/2001*)

- the working programme within a quarry where the changes were contained within the excavated area of the quarry;
- minor amendments that had become essential because of practical or constructional difficulties which could not have been foreseen (e.g. escape window to meet Building Regulations);
- relocation of openings within an elevation that already had openings where that opening was in close proximity to, and at the same floor level as, that originally approved;
- minor re-siting (within a metre) of a dwelling in a single plot, provided that the change resulted in no greater overlooking of neighbours’ properties;
- changes to landscaping details;
- reduction in the size of a proposed extension to which there was no objection, and
- minor alterations in site levels which resulted in an increase of ridge height of 300mm or less.

d) Other Functions:

- Tree preservation orders and applications to fell/lop within such areas
- Purchase Notices
- Designation of Conservation Areas
- Completion Notices

The Authority is also required to comment on applications being considered by other authorities.

2) EXCEPTIONS

The following matters have to be the subject of a report to the Development Management Committee:

- Any application subject to Environmental Impact Assessment.
- Any “major” application as defined by the need to advertise the proposal under article 8 of the General Development Procedure Order, 1995.

- Any application that is contrary to the provisions of the Development Plan but which is to be recommended for approval.
- Any application where there is conflict between the Development Plan policies and policies proposed in an emerging plan.
- Any application (except discharge of condition – see above) submitted by a Member of the Authority, or a member of his immediate family, or a member who has left the Authority less than twelve months prior to the submission of the application.
- Any application (except discharge of condition – see above) submitted by, or in which an officer employed by the Authority has an interest.
- Any application (except discharge of condition – see above) where the owner of the land is a Member or an officer of the Authority as declared on the ownership certificate accompanying the application.
- Any application that is to be determined contrary to the view expressed by the Community Council, where that view is a material planning consideration. The only reason for bringing an item to Committee in these circumstances should be based on a material planning consideration. The comment ‘support’ or ‘object as it is retrospective’ would not be judged a sufficient reason to bring an item to Committee if the officer recommendation was contrary. (Caveat amended by NPA 14/10/09)
- Any application that is to be recommended for approval contrary to the advice of a Statutory Consultee.
- Any application which the Chief Executive, Director of Park Direction and Planning and/or the Head of Development Management decides should be referred to Committee because it raises matters of significant public and/or Member interest or where the matter is considered to be contentious or controversial. Justification for this approach to be recorded on the file.
- Any application made by or on behalf of the Authority or an application in which the Authority has a financial interest as landowner
- The designation of a Conservation Area.
- Any application that a Member requests be brought before the full Committee. Members wishing to take advantage of this provision are to advise the officer in writing using the appropriate form within 21 days from the receipt of a valid application, giving the reasons why they would like the matter considered by the Committee. (Criterion added NPA 14/10/09 and amended NPA 07/12/11)

3) The Chief Executive (National Park Officer), Director of Park Direction and Planning, and the Head of Development Management be authorised to

approve provisional Tree Preservation Orders – the signatures of any two officers being required on such an Order. (NPA 20/09/04)

4) ENFORCEMENT

- a) Consideration of the need to serve the following are delegated to the Chief Executive (National Park Officer), in the absence of the Director of Park Direction and Planning and/or the Head of Development Management:
- Planning Contravention Notices (Principal Planning Officers also authorised to sign, subject to no officer signing PCNs which relate to cases on which they are the case officer) (NPA 01/02/12)
 - Breach of Condition Notices
 - Enforcement Notices
 - Listed Building Enforcement notices
 - Stop Notices
 - Injunctions
 - Institute Prosecutions or other legal proceedings
- b) Every enforcement case is delegated unless (NPA 01/02/12):
- i. There is a breach of planning control and the case is contrary to the provisions of the Development Plan but it is recommended that enforcement action should not be taken (this would not include cases that are lawful by virtue of the passage of time or are of such a minor nature that it is not expedient to take action).
 - ii. There is a breach of planning control and the case complies with the provisions of the Development Plan but it is recommended that enforcement action should be taken.
 - iii. The case relates to a Member of the Authority, or a Member of his /her immediate family or a Member who has left the Authority less than twelve months prior to the commencement of the investigation.
 - iv. The case relates to a site in which an officer employed by the Authority has an interest.
 - v. The case is one which the Chief Executive, Director of Park Direction and Planning, the Head of Development Management or the Authority's Solicitor/Legal advisor decides should be referred to Committee because it raises matters of significant public and/or Member interest or where the matter is considered to be contentious or controversial or which could have financial implications for the Authority. Justification for this approach is to be recorded on the file.
 - vi. The case relates to land in which the Authority has an interest or has a financial interest as landowner.

- vii. Any Member may ask for a particular case to be brought before the Committee by writing to the Head of Development Management and giving full reasons which should be based on planning grounds.
- viii. Prosecution action is required - unless in relation to a breach of the advertisement regulations or in relation to works to a listed building which are criminal offences and often require immediate action as a result.

This scheme of delegation relates to the taking or not of enforcement action, breach of condition action, action under Section 215 of the Town and Country Planning Act, action in respect of unauthorised advertisements etc

The delegation for taking action is given to the Chief Executive, Director of Park Direction and Planning, the Head of Development Management and the two Principal Planning Officers. The Authority's Solicitor will also be required to check all enforcement notices.

The delegation for serving a Stop Notice is given to the Chief Executive or Director of Park Direction and Planning in consultation with the Chair or Deputy Chair of the Development Management Committee.

5. The following matters under the Nationally Significant Infrastructure Projects regime:

- All procedural matters including responses to the Statement of Community Consultation and adequacy of consultation request
- Response to Pre-application enquiries
- Preparation and Presentation of Evidence at Examinations
- The consideration and determination of information required by conditions of development consent orders

(NPA 05/02/14)