



## Guidance for Non-material amendment(s)

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

November 2009

#### 1. INTRODUCTION

- 1.1 From 1<sup>st</sup> October 2009 a new provision under s96A of the Town and Country Planning Act came into force and allows a way for non material amendments to be made to planning applications. This provision has been introduced by the Government in order to provide for a formal method of dealing with small changes to approved schemes.
- 1.2 The need for such amendments can arise from unexpected changes in circumstances or site conditions when the development is under way and is generally considered by developers and their agents as being helpful. However, such a process is often regarded less favourably by those who are denied the ability to participate in the process, such as Parish Councils or neighbouring occupiers. Great care must therefore be exercised to strike the right balance between what is genuinely a reasonable and minor change and what is undemocratic. There is also a need to be alert to the potential danger of cumulative or incremental changes to approved schemes which can arise as a result of a succession of amendments, resulting in a substantial departure from what was originally approved under the scrutiny of public consultation and involvement.
- 1.3 The following protocol seeks to clarify to this process as well as setting out the procedures involved.

#### 2.0 CRITERIA FOR ASSESSING NON MATERIAL AMENDMENTS

- 2.1 The Government guidance non material amendments has now been issued but does not define what changes may be treated as being non material. This protocol seeks to provide guidance on the procedure and how Mid Devon District Council proposed to assess non material amendments.
- 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 Mid Devon District Council considers the key tests as to the acceptability of a change to an approved scheme under the non material amendment procedure are threefold:

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:
  2. Would the proposed change result in a detrimental impact either visually or in terms of amenity?
  3. Would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way? (This is a particularly significant issue as there is no provision for consultation or neighbour notification within the non material amendment procedure.)
  4. Would the amendment be contrary to any policy of the Council?
- 2.2 If having successfully applied the first test, the answer to any of points 2, 3 and 4 is 'YES', then the matter cannot qualify as a non material amendment.
- 2.3 In making an assessment the following factors will also be relevant;
- Is the matter covered by a restrictive condition on the original approval? If so, it cannot be dealt with as a non material amendment.
  - Was the matter the subject of any objections or other material representations on the original permission?
  - What would be the effect of changes to site coverage, height of buildings, levels and relationship with any adjoining development, position of windows, materials proposed etc?
  - What would be the impact on existing trees and any approved landscaping scheme?
  - What would be the impact on the amenities of adjoining occupiers?
  - Are there significant changes to the appearance of proposed buildings which would affect the surrounding area/street scene?
  - Have there been previously agreed amendments to the scheme which will cumulatively result in the current request representing a significant change from the original.
  - Are there any other material considerations identified in the original officer report which should inform the decision?
  - Regard must be had to the provisions of the Development Plan and Government guidance.
- 2.4 The following are some examples of what may **NOT** constitute a 'non material amendment'.
- New windows, openings or enlargements which would result in loss of privacy or amenity to neighbours.
  - Any change that would affect occupiers of a neighbouring property or other third party.
  - Any change that would affect a consultation response on the original application.
  - An extension to the site boundary (or "red edge" of application site).
  - An enlargement (or reduction) of the volume of a new building which represents a material increase (or reduction) in the scale or size of the building or a material alteration in appearance of a building from that which is approved.
  - An increase in the height of new building or extension by more than 0.5 metre in the case of a building of two-storeys or more, or 0.2 metre in the case of a single-storey building unless topographical circumstances, issues of scale and

relationship to the street scene, or other development plan policies indicate otherwise.

- Any changes to ground level which would in itself constitute an 'engineering operation' or would result in potential loss of privacy or visual amenity.
- Any works which in themselves constitute 'development' requiring planning permission.
- Any change to the external materials which would adversely affect the character or appearance of the development or erode the quality of that which was originally approved.

2.5 This is not intended to be comprehensive and each non material amendment request must be considered on its merits having regard to all relevant circumstances.

### 3.0 **A SPECIAL NOTE ON 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 either Listed Building 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 **HOUSING ESTATES**

4.1 Frequently requests are received for revisions to house types or site layout in respect of housing estates. Whilst the requested amendment might be relatively 'non material or 'minor' in the context of the overall scale of the whole estate, such localised revisions can have a significant impact on any existing neighbouring properties. Even the 'handing' of house types can have overlooking impacts on neighbouring properties, whether existing or proposed.

4.2 Again great care must be exercised, with particular emphasis on the potential impact of any changes to proposals on occupiers of both existing neighbouring properties and future occupiers of dwellings already authorised by the original permission. It is important to remember that future occupiers may well have agreed the purchase of new dwellings on the basis of the layout as originally approved.

4.3 Requests to vary the external or facing materials of individual or groups of dwellings within an estate (e.g. from stone to brick), whilst possibly non material or 'minor' in relation to the overall scale of the development as a whole, can however have a significant impact on the immediate surroundings. Amendments of this nature would only qualify under the non material amendment procedure if the street scene and local character remained unaffected.

### 5.0 **PROCEDURE**

5.1 Requests for a non material amendment must be made on 4 copies of the correct form, accompanied by 4 sets of relevant drawings and plans which clearly indicate the nature of the amendment(s) requested. Electronic submissions can be made via the Planning Portal.

5.2 At present there is no planning fee for making a non material amendment. The Government has indicated that it will issue new fee guidance in late December (to be confirmed) and it is likely that the following fees will be introduced:

Non material amendment applications in respect of householder applications £25

Non material amendment applications in respect of other developments £170

More than one amendment may be sought on the same form and for the same fee (when a fee is introduced).

- 5.3 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 service notice on the others that are. This will require the other owners to be told of the proposed amendments and that they will have 14 days for making representations.
- 5.4 Under the non material amendment provision, there are no requirements for the Local Planning Authority to undertake any of the following: the submission of design and access statements, for publicity to be carried out as part of the amendment process, for consultation or for the identification of unknown other site owners. No consultation will therefore take place with Parish / Town Councils or neighbouring properties. These would have been carried out as part of the original application.
- 5.5 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. The use of a highlighter pen, cross hatching or other notation is helpful.
- 5.6 Full specification of materials, colours, sections must be included where appropriate.
- 5.7 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/clarification has been received.
- 5.8 The officer will make an assessment on the basis of the information submitted and in line with this Protocol. If found to be acceptable, the amendment will be agreed by the issuing of a decision in writing within which the amendment will be described and drawings will be identified. It will not reissue the original planning permission. The two documents should be read together. The Local Planning Authority is able to impose new conditions or remove / alter existing conditions as part of the decision. Local Planning Authorities have 28 days from the receipt of a valid application to issue a decision, or longer if that has been agreed in writing.
- 5.9 In the event that the non material amendment is refused or not determined, there is a right of appeal under s78 of the Town and Country Planning Act 1990. It is anticipated that the scope of this appeal will be limited to the proposed change. Appeals against refusal must be made within 12 weeks (for householder appeals) or six months (for other applications) All appeals against non determination must be made within six months of the end of the 28 day determination period.
- 5.10 If the extent or nature of the revisions requested exceed 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 of the likely acceptability of the proposals and any further issues to address.