

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT: LEGISLATION TO APPROVE NON-MATERIAL AMENDMENTS TO EXISTING PLANNING PERMISSIONS

Purpose of Report

- 1. To inform members of new legislation that introduces a formal procedure for the approval of non-material amendments to existing planning permissions.**
- 2. To note the contents of the report**

Background

At present there is no formal procedure in place for planning authorities to agree minor or 'non-material' amendments to existing planning permissions. The courts have ruled that the agreement of such minor, but non material amendments, is beyond the powers available to local planning authorities.

Section 73 of the Town and Country Planning Act 1990 does enable amendments to a planning approval to be sought through the submission of another planning application to vary the condition specifying those plans that the permission relates to. Here in PCNPA we now note all the relevant plans references in a condition (normally condition 2 on the decision notice) to enable such applications to come forward easily. This is deemed to be good practice and something that the Welsh Government has put forward in its Positive Planning bill.

As members are aware the Welsh Government has a programme of measures to improve the planning application process in Wales. In light of the above, one of these measures is to introduce a statutory procedure for the formal determination of 'non-material' amendments to existing planning permissions.

On 7th July 2014 the Welsh Government advised that legislation has been made that will introduce this formal procedure and which will come into effect from 1st September 2014.

The Proposed Changes

The necessary legislative changes have been introduced through the following Statutory Instruments:

- The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014 makes amendments to Section 96A of the Town and Country Planning Act 1990 to introduce a power to make non-material amendments.

- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014 provides the procedures to determine these amendments.
- The Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014 introduces a small fee.

The changes to the above legislation enable a specific type of application to be made for 'non-material' amendments to an existing planning permission. The application can be made either before, during or after the development has taken place. There is no definition of a 'non-material' amendment provided, as this will depend on the specific context, and on other amendments being sought to the overall permission.

The guidance note accompanying the legislation suggests that planning authorities should use a series of tests to assess whether an amendment is material or not and these are based on scale, whether the proposed change would result in a detrimental impact, whether the interests of any third party or body would be disadvantaged in planning terms, and whether the change would conflict with national or development plan policies.

The procedure for making an application would be similar to that of any other application, using a specific application form and attracting a fee of £25 for householder development and for all others, one of £83. There are exemptions from paying the fee where the change relates solely to providing a means of access for disabled persons or where the 'non material' amendment requires permission by virtue of an Article 4 or through the removal of permitted development rights by condition.

Consultation is discretionary and will depend on the nature of the change, the proximity to neighbours and responses received at the time of the original permission. There is a 28 day period for determination, unless an alternative time is agreed in writing, and due to the minor nature of the changes being sought, the Welsh Government expects local planning authorities to have appropriate delegation arrangements in place for determining the applications.

Determination of the applications is required to be made in accordance with the Development Plan and with regard to the effect of the change, and if the change is refused this must be on the basis that the amendment has a material effect. A refusal would not however preclude applications being made for material amendments under the existing arrangements under Section 73 of the Town and Country Planning Act 1990. Where multiple amendments are proposed and some are considered to be non-material and others material, it is open to authorities to partially approve the application.

There is no format for the decision but it must be made in writing with the decision recorded on the register. There is no right of appeal against refusal, with the appropriate mechanism being through the Section 73 application route in such circumstances. The procedure also enables local planning authorities to impose a condition to enable an application under Section 73 to be made where such a condition does not exist on the original planning permission.

Implications for the Authority

The Authority receives approximately 50-60 requests for minor amendments that fall outside the Section 73 procedure per year. Whilst the proposals introduce a more formal basis for applying with the associated administration work, it is not envisaged that this will result in significantly more work than already exists from the current arrangements. In addition, the procedure will generate a fee which, whilst a relatively small sum, will go some way to cover the costs associated with the new procedure.

The formalisation of the process is welcomed as it will provide greater certainty for developers and also provide a more robust way of monitoring planning permissions and subsequent changes. Delegation arrangements are already in place through the agreed Scheme of Delegation for the revocation and modification of planning permissions, so this new change is already covered.

The Welsh Government does require decisions to be entered on the register and the legislation requires decisions to be made within 28 days and which will be an auditable statistic. However, due to the minor nature of the applications, and the fact that a longer determination period can be agreed if necessary, it is not considered that this is an unrealistic timeframe and that the Authority should be able to respond positively to these new requirements.

Conclusion

The proposals to introduce a formal procedure for the determination of requests for non-material amendments to existing planning permissions is welcomed, and will have minimal resource implications for the Authority over and above those already attributed to such requests. The proposals will also provide a small income from fees and provide greater certainty for both developers and the Authority when monitoring development work. The necessary delegation arrangements are in place, and subject to some minor administration changes, the proposals result in no major implications or risk to the Authority.

Recommendation

That members note the contents of this report.

Background Documents

Welsh Government Notification – Approving Non-material Amendments to Existing Planning Permissions, 7th July 2014

Welsh Government Planning Guidance: Approving Non-material Amendments to Existing Planning Permissions, July 2014

Welsh Statutory Instruments – The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014

The Town and Country Planning (Fees for Non-Material Changes) (Wales)
Regulations 2014

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