

WILTSHIRE COUNCIL

GUIDANCE ON NON MATERIAL AMENDMENTS FOLLOWING A GRANT OF PLANNING PERMISSION

1.0 INTRODUCTION

- 1.1 s96A of the Town and Country Planning Act allows a way for non-material amendments to be made to planning permissions. 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 not. 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 seeks to clarify and provide guidance on this process as well as setting out the procedures involved.

2.0 CRITERIA FOR ASSESSING NON MATERIAL AMENDMENTS

- 2.1 The Government guidance on non-material amendments does not define what changes may be treated as being non material. This document is intended to provide guidance on the procedure and how Wiltshire Council will assess non-material amendments.
- 2.2 S96A of the Town and County Planning Act 1990 states 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 Wiltshire Council considers the key tests as to the acceptability of a change to an approved scheme under the non-material amendment procedure are threefold:
- i. 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:
 - ii. Would the proposed change result in a detrimental impact either visually or in terms of amenity?

- iii. 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 statutory provision for consultation or neighbour notification within the non-material amendment procedure.)
 - iv. Would the amendment be contrary to any policy of the Council?
- 2.4 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.
- 2.5 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.
- 2.6 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 of the volume of a new building.
 - An increase in the height of new building.
 - 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.
- 2.7 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 provision in legislation for changes to Listed Building Consent. 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 should preferably be made electronically via the Planning Portal, using the correct form and accompanied by relevant drawings and plans which clearly indicate the nature of the amendment(s) requested.
- 5.2 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 serve 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.
- 5.3 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.
- 5.4 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.

- 5.5 Full specification of materials, colours, sections must be included where appropriate.
- 5.6 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. It is important to note that any amendments that are shown on the plans but are not clearly identified within the submission will be expressly excluded from the decision.
- 5.7 The officer dealing with the application will make an assessment on the basis of the information submitted and in line with this guidance. 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.
- 5.8 There is no right of appeal to a refused Non-Material Amendment application. In the event of a refusal, the applicant must make a planning application for the proposed changes.
- 5.9 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.

6.0 REQUIRED FEES FOR NON-MATERIAL AMENDMENT APPLICATIONS

Under the Town & Country Planning (Fees for Applications and Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017, the required fees are:

- Applications relating to householder permissions - £34
- All other applications - £234