

**New Rules for
Seeking Minor
Amendments**

DLP BRIEFING NOTE 5

Prepared by
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New rules in relation to *minor material amendments* and *non-material amendments* to existing planning permissions.

For many years it was the sensible and pragmatic working practice of most planning authorities to agree amendments to extant planning permissions by way of an informal exchange of correspondence. This informal system worked well in allowing modest changes to approved planning drawings – a common feature of the development process – without requiring the applicant to submit a completely new planning application. The system was timely for the applicant and administratively simple for the Local Planning Authority.

This all changed, however, following the judgement in *Sage v SoS* in 2003; many Local Planning Authorities interpreted this judgement as meaning that it was no longer possible for them to lawfully approve any amendment to an extant planning permission outside the remit of a formal new application. The interpretation of the *Sage* judgement has caused disagreement and controversy ever since, with many commentators arguing that the inability of a Local Planning Authority to approve a minor amendment has resulted in increased application workload for Councils and additional time and cost implications for applicants.

The Killian Pretty Review of the planning system, published in November 2008, identified the lack of opportunity for minor amendments as being one of the blocks to achieving a faster, more responsive planning system. The Review proposed that a way be found to avoid minor amendments having to be subject to a complete new planning application – a year on, the Government has consulted on what it considers to be an appropriate method for such changes, and will be implementing its new procedures from **1st October 2009**.

Under the new powers, which are being introduced via secondary legislation, Section 190 of the Planning Act 2008 will be enacted to allow for minor amendments to be made to existing planning permissions. In respect of **minor material amendments**, the Government's current position is to define such an amendment as:

“A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.”

The Government's adopted approach for dealing with such matters is to introduce greater flexibility into Section 73 of the Town & Country Planning Act 1990 to allow a simpler application procedure for those seeking to make this type of alteration to an extant planning permission. Essentially, if the Local Planning Authority considers that proposed amendments to an extant planning permission fall within the definition set out above, then the only route to secure the changes will be via the new “simplified” application process. A Section 73 application is an established way of seeking to carry out development without complying with a condition of the approved planning permission (where the condition required compliance with its approved plans - often referred to as 'varying a condition').

Alternatively, there is also provision in the Planning Act 2008 for Local Planning Authorities to be able to approve “**non-material amendments**” to existing planning permissions. Section 190 of the 2008 Act introduces new Section 96A into the Town and Country Planning Act 1990; this section sets out a simple mechanism by which non-material changes to existing permissions can be permitted without having to submit a completely new planning application. Instead an application for a minor non-material amendment will be made, on the standard application form.

Somewhat unfortunately, the Government does not intend to provide a definition of 'non-material'; this will remain a matter for local authority discretion. There is likely to be ongoing debate, discussion and disagreement therefore as to whether or not specific proposed changes will be a "minor material amendment" requiring a formal application, or a "non material amendment" dealt with under the new informal approval procedures. The new non-material amendments regime will cover only planning permissions and cannot be applied to listed building or conservation area consents.

In terms of the new informal approval procedures, some matters to do with their application are already prescribed in Section 96A of the 2008 Act. This sets out that the local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted; that an application can only be made by or on behalf of a person with an interest in the land; and that an application under this section must be recorded on the planning register.

The Government is proposing that there be a requirement for the Local Planning Authority to notify anyone who was notified of the previous application, and a requirement to take into account representations from these persons if they are received within 14 days. Local Planning Authorities would have discretion in whether and how they choose to inform other interested parties or seek their views. As by definition the changes sought will be non-material, the Government would not expect consultation or publicity to be necessary in the majority of cases, and does not anticipate effects which would need to be addressed under the EIA regulations.

Decisions should be made by the Local Planning Authority on non-material amendment applications within 28 days of their receipt. No fee is payable for such applications, which can only be made in England; there are currently no proposals to introduce a similar regime in Wales.

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