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Non - Material amendments to planning permissions.

Minor amendments to planning permissions after they were granted, but before implementation were a long time thorny problem in planning. There was recognition that many authorities, including Daventry, appreciated the expediency of allowing minor amendments after planning approval - for example due to Building Regulations requirements, and operated an informal process of what were known as "Overlays". This allowed minor amendments of no consequence to be permitted and did not involve consultations. They were mostly just dealt with by amended plan/letter. They were not placed on the register. This was not allowed for major changes, because there were no formal processes for consultations/notifications, and in the event of an unacceptable proposed change, there was no right of appeal against a refusal. In such cases a fresh application was required.

In the early 2000's following High Court/House of Lords judgement/rulings in a case known as "the Sage Case" many authorities, again including Daventry, took the view that informal amendments were no longer permitted and ceased the practice overnight. This meant in all cases, no matter how inconsequential, the only way of varying a planning permission was by way of a fresh application.

The Government decided that this was not a satisfactory state of affairs and in 2007, the document *Planning for a Sustainable Future* consulted on 'allowing minor amendments to be made to planning permissions'. A provision to provide a mechanism to make non-material amendments to planning permissions was subsequently introduced via s.190 of the Planning Act 2008, which inserted s.96A into the TCPA 1990. Section 190 was commenced on 1 October 2009. In 2009,

They also issued a guidance note, which was reissued by the current Government in October 2010.

Section 96A allows a non-material amendment to be made to an existing planning permission via a simple application procedure with a quick decision time.

The guidance note states that "where the change is non-material, s.96A allows new conditions to be imposed, or existing conditions to be removed or altered."

There is no statutory definition of 'non-material'. This is because it is so dependent on the context of the overall scheme – what may be non-material in one context may be material in another. A common sense approach is necessary and a sense of proportion must be maintained. Regard should be had to the terms of the condition, the reasons for its imposition, and whether the change sought would change its substance or affect the permission granted. If the answer is no, then the non – material amendment procedure would be appropriate.

Conditions may only be imposed if they meet 6 tests – necessary, relevant to planning, relevant to the development to be permitted, reasonable, precise, enforceable.

It is not reasonable to impose a condition which requires the agreement of the third party, in other words only the Local Planning Authority may modify, discharge or remove a condition. It may in doing so require input from other statutory consultees such as the Environment Agency or Highway Authority, but the decision remains that of the Council.

As an application under s.96A is not an application for planning permission, the existing Development Management Procedure Order provisions relating to statutory consultation and publicity do not apply. Because it is non-material the guidance states that it is not anticipated consultation or publicity will be necessary. If it were, the amendment is unlikely to be non-material and another procedure would be used.

The previous practice of "overlays" is now outlawed and applications for non-material amendments unlike before, the application must now be placed on the planning register.

There is no right of appeal against a decision on a non – material amendment.

The decision, which must be issued in writing – usually a letter, only relates only to the non-material amendments sought and the response attached describes these. It is not a reissue of the original planning permission, which still stands. The two documents should be read together.

Parties who may have been involved in the application and/or appeal, have no right to be consulted on the modification of conditions under this procedure, or the discharge of conditions in general.

If the amendment is to be material considered a more formal process Section 73 application will be used and we may consult Statutory Consultees and at our discretion give publicity to the application.

Refusal to modify or remove a condition by this material method or failure to determine any application is subject to the normal appeal procedures.

Keith Thursfield
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Daventry District Council
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