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## Consultation – summary of responses

# Non-material Amendments to Planning Permissions

Date of issue: July 2014



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# **1. Introduction**

- 1.1 The “Non-material Amendments to Planning Permissions” consultation document was issued on 10 December 2012 with responses sought by 15 March 2013. A total of nine questions were set out in the consultation document, with a standardised form provided for ease of response.
- 1.2 The consultation document generated 35 responses and the following document provides a summary of responses received, arranged into key themes where appropriate.

## 2. Responses

2.1 In total, 35 responses were received for this consultation paper. The breakdown of respondents is provided in the chart below:

<b>Category</b>	<b>Number</b>	<b>% of Total</b>
Businesses / Planning Consultants	7	20
Local Authorities (including National Park Authorities)	14	40
Government Agencies/Other Public Sector	4	11
Professional Bodies/Interest Groups	6	17
Voluntary sector (community groups, volunteers, self help groups, co-operatives, enterprises, religious, not for profit organisations)	2	6
Other (other groups not listed above)	2	6
<b>Total</b>	<b>35</b>	<b>100%</b>

2.2 A full list of all respondents can be found in Section Five. Copies of the individual consultation responses received are available on the Welsh Government website.

### **Key Themes**

2.2 The responses have been grouped into the key themes which are identified below. For ease of reference these have been linked to the relevant consultation questions.

- A The tests for non-material amendments (Question One)
- B The operation of the application process (Question Two, Four and Five)
- C The charging of a fee (Question Three a and b)
- D The decision timeframe and appeal (Question Six a and b)
- E Other comments from the consultation (Question Seven, Eight, and Nine).

### **3. Summary of Responses by Key Theme**

#### **A. The tests for non-material amendments (Question One)**

**Q1. Do you agree with the identified tests to assist in assessing whether or not a proposed change would qualify as a non-material amendment to be determined under Section 96A of the TCPA 1990? If not, please specify the reasons and provide suggested alternatives.**

- 3.1 There was strong support, with 88% (30 out of 34) of respondents supporting the proposed tests to assist in determining whether or not a proposed amendment is non-material. However a number of comments/issues were made which are summarised below.

#### **Further clarification/guidance**

- 3.2 A number of respondents sought further clarification or guidance as to what constitutes a non-material amendment. It was considered that this would help all parties and ensure consistency between local planning authorities.

- 3.3 A number of respondents suggested that to assist the determination of non-material amendments, examples of non-material changes or specific criteria could be provided. This could include, for example, the provision of detailed examples showing an acceptable amendment or additional criteria, such as a specific height or floorspace changes that would be acceptable as a non-material amendment.

#### **Other considerations**

- 3.4 Various stakeholders highlighted that the identified test should only be seen as a starting point as there are other factors that should be taken into consideration in determining if an amendment is non-material.

#### **Interpretation of specific words within the tests**

- 3.5 Respondents raised concern that the tests are open to interpretation. These include;
- In the first test, the introduction of the term "significant" is considered to add confusion, given that a non-significant change could still be material. The first test should therefore be whether the scale is material in relation to the original scheme.
  - The use of 'detrimental impacts' and 'disadvantaged' were identified as being dependent on the standpoint of the individual, so a difference of opinion between the LPA and third party could lead to confusion and lack of transparency in the process.

- It should be made clear that third party interests included those interests of statutory and non-statutory consultees.

### **Third parties**

- 3.6 A number of Local Planning Authorities (LPA's) considered that an affected third party does not need to be one who raised an objection during the original application process.
- 3.7 A business/planning consultant also highlighted that the effect of such amendments on third parties should be an important consideration in the determination of these applications.

### **Response to representations**

#### **Further clarification/guidance**

- 3.8 It is considered that the tests identified in the guidance provides LPAs with a starting point in their assessment and determination of whether or not a proposed change would qualify as a non-material amendment.
- 3.9 Given that possible amendment(s) sought to the original planning permission, the specific circumstances of the site and its surroundings, as well as the overall context of the development scheme are some of the key determining factors, which will vary considerably from one application to another, additional guidance cannot be provided to capture all these local variances and circumstances.

#### **Other considerations**

- 3.10 The tests identified in the guidance only provide a starting point for the LPA in their assessment and determination of whether a proposed change would qualify as a non-material amendment. This does not prevent the LPA from considering other factors in the consideration or determination of such applications.

#### **Interpretation of specific words within the tests**

- 3.11 Overall the tests have received support from respondents (88%), with some confirming that they are similar to those currently in use by LPAs.
- 3.12 In terms of comments received by respondents regarding the interpretation of words within the tests, the guidance document has been revised to address these issues.

### **Third parties**

- 3.13 Local discretion is needed to identify who may be affected by a proposed non-material amendment. It is agreed that it should not be

restricted to those who raised an objection to the original permission and the relevant test has been amended to reflect this.

**B. The operation of the application process (Question Two, Four and Five)**

**Q2. Do you agree with the proposed information requirements to support an application for making non-material amendments? If not, please specify the reasons and what information requirements that you considered are necessary.**

**Q4. Do you agree with the approach taken to consultation / publicity for non-material amendment applications? If not, please specify the**

**Q5. Do you agree with the approach taken in relation to notification for non-material amendment applications? If not, please specify the**

- 3.14 There was general support for the proposed application process for non-material amendments, with:
- 94% (32 out of 34) of respondents supported the proposed information requirements;
  - 94% (31 out of 33) of respondents supported the consultation and publicity proposals; and,
  - 73% (24 out of 33) of respondents supported the notification requirements.

- 3.15 The key issues raised are summarised below:

**What information must accompany an application (Question Two)**

- 3.16 Some LPAs questioned the need for a standard application form as they have successfully dealt with minor amendments through an exchange of correspondence. This position was not universal as a number of respondents, including LPAs, supported the use of a standardised application form.
- 3.17 There were some concerns raised by stakeholders over the limitations imposed on who can apply for a non-material amendment. In particular:
- Concern was raised over the precision in which the definition of the term 'legal interest in the land' was worded. It was considered that the guiding principle to define this term should relate to a legal estate or other interest sufficient to enable the applicant to implement the development.
  - Some respondents considered that the original applicant should not be excluded from the process.



### **Consultation / Publicity (Question Four)**

- 3.18 There was a general consensus that the LPA is 'best placed' to decide who should be consulted on such applications.
- 3.19 The LPAs that responded to this question considered that if consultation needed to be undertaken on such an application, then it would be questionable whether the change is non-material in nature.
- 3.20 Other respondents considered that there should be a presumption against consultation given the nature of the changes proposed.
- 3.21 Some comments were received that sought to increase the consultation requirements to ensure that community councils, immediate neighbours, or those who participated in the original application should always be consulted on such applications.

### **Notification (Question Five)**

- 3.22 Some LPAs considered that the process of notification appears to be a private matter and its introduction is likely to result in confusion and delay. This opinion was also supported by other respondents who also commented that notification would only be required in respect of material changes, as non-material changes, by definition, should not affect anyone.
- 3.23 Some respondents commented that the notification requirements should extend to anyone with a legal estate or interest in the land.

## **Response to representations**

### **What information must accompany an application (Question Two)**

- 3.24 Introducing a standardised application form is considered necessary to ensure consistency is provided across Wales in the information required to support and determine a non-material amendment application. It will also assist and guide potential applications who may be unfamiliar with the planning system.
- 3.25 In terms of the concern raised over the limitations imposed on who can apply for a non-material amendment, it is considered that persons with a legal interest in the land are most likely to be those who undertake the development. Restricting who can apply for such an amendment is considered important given that the permission granted directly amends the original planning consent. Widening this scope could be used as a mechanism to frustrate the planning and development process.

3.26 The definition of 'legal interest in the land' includes those interests identified by the respondent. However, it is considered that the requirements in the definition relating to a person with a 'leasehold' interest is overly restrictive and should be relaxed – reducing the need to have a seven year leasehold interest to two year. This change has been made in order to increase the scope of the people that can make such applications.

3.27 In order to provide greater clarity and consistency to applicants and local planning authorities about who can apply for such amendments, the revised definition is now set out in legislation.

#### **Consultation / Publicity Requirements (Question Four)**

3.28 An application made under Section 96A is not an application for planning permission and is therefore not subject to the existing DMPWO provisions on consultation. As such consultation is at the discretion of the LPA and will not be necessary in the majority of cases. It is therefore to be determined by the LPA on a case by case basis.

3.29 It is considered that the need to consult should not determine whether or not a proposed amendment is non-material. The views sought from the consultation exercise may not raise any planning related issues or those consulted may advise that they consider the amendments to be non-material in nature.

3.30 Increasing the consultation requirements isn't considered necessary. With 94% of respondents supporting the consultation and publicity requirements detailed in the consultation paper, it is considered that they are appropriate and proportionate to the nature of the amendments under consideration. They also provide the LPA with the discretion on who to consult i.e. the LPA is not restricted to who they notify / consult.

3.31 Introducing a system of compulsory consultation would create unnecessary delay and cost for applicants and unnecessary additional work and cost for LPAs where it is clear that the proposed amendment will not have an impact on stakeholders.

#### **Notification Requirements (Question Five)**

3.32 Taking into consideration the responses received and after careful reflection of the legal position, it is now considered more appropriate for the notification to be carried out by applicants on a non-statutory basis. This has been reflected in the guidance document as best practice.

### C. The charging of a fee (Question Three a and b)

**Q3(a). Should a fee accompany an application for making non-material amendments to an existing planning permission? If not, please specify the reasons.**

**Q3(b). If the answer to question 3(a) is yes, do you agree with the proposed fee level? If not, please specify the reasons and the fee level considered to be appropriate for such an application.**

3.33 The principle of a fee to accompany the application was supported by 94% (30 out of the 32) of respondents. This was on the basis that the formal procedure is consistent, proportionate and timely. 63% (20 out of 32) of respondents also supported the proposed fee level.

3.34 The following provides a summary of the key issues raised.

#### **The principle of a fee**

3.35 There was strong support from LPAs that a fee should be charged to cover the costs of processing and determining the application.

3.36 All respondents generally considered that a fee would be acceptable provided the service provided by an LPA is efficient, effective and undertaken in a timely manner.

3.37 Representations from some LPAs expressed the view that should consultation be required as part of the determination process, then an additional fee should be paid by the applicant to cover the additional costs associated with this process.

#### **The level of the fee.**

3.38 A number of LPAs indicated that the proposed level of fees would seem proportionate with the level of work required to determine the application.

3.39 It was identified by some LPAs that multiple amendments in one application would increase the work required and as such the application fee should reflect this. It was felt that the number of changes allowed on each application should be limited in order to address this issue.

3.40 Businesses and other bodies (which include developers) considered that the fee level appeared excessive considering the scale and nature of the amendment that can be undertaken under Section 96A of the TCPA 1990. They drew comparison with applications made under Section 73 of the TCPA 1990, which has the same fee but greater procedural requirements.

## **Response to representations**

### **The principle of a fee**

- 3.41 There was strong support that a fee should accompany such as application.
- 3.42 The changes sought through this new procedure will be non-material in nature and it is not anticipated consultation will be required. Should consultation be necessary, it should be focused. It is therefore considered that this will not generate much additional work to merit charging and additional fee.

### **The level of fee**

- 3.43 It is considered that a set fee is appropriate for this application, as this will account for the different type and amount of amendments that can be made on a single application. This situation reflects the current fee position in respect of applications made under Section 73 of the TCPA 1990, where a single application can seek to amend one or all of the conditions attached to a consent.
- 3.44 The proposed fee level was set at the same level as an application for planning permission made under Section 73 of the TCPA 1990. Taking the view of the business sector, it is accepted that the non-material procedure is different to that associated with applications made under Section 73 of the TCPA 1990.
- 3.45 In comparison to an application made under Section 73 of the TCPA 1990, the LPA will require fewer resources to process and determine the application. For example, there should be no requirement for the LPA to undertake notification or consultation on the application, or consider any responses received. In determining the application, the assessment is based solely on the materiality of the change, and it is expected that a decision will be achieved through delegated powers. This is also reflected by the fact that the determination period for non-material amendment applications is shorter (28 day determination period compared to 8 weeks for applications made under Section 73 of the TCPA 1990).
- 3.46 To reflect these differences the application fee has been reduced to £83 for 'other' applications, with the fee level of £25 remaining the same for householder applications.
- 3.47 In terms of the issue raised about limiting the number of changes that can be made to a scheme, it is not considered appropriate to restrict the number of amendments or the number that can be made on a single application. As stated in the draft guide, the LPA must have

regard to the effect of the change together with any previous changes made to the original planning permission. Should a LPA determine that this leads to a material change then the application must be refused.

#### **D. The decision timeframe and appeal (Question Six a and b)**

**Q6(a) Should a decision on an application for non-material amendments be made within 28 days of its receipt? If not, please specify the reasons and the determination period considered to be appropriate for such an application.**

**Q6(b) Is it necessary to introduce a remedy in the circumstance that a local planning authority does not determine an application within the proposed 28 days? If the answer is yes, please specify what remedy is considered appropriate.**

##### **The 28 day determination period (Question Six a)**

- 3.48 There was broad agreement (91%, 31 out of 34) from representatives of all groups that the time period for determination of the application should be 28 days or a longer period if agreed in writing between the applicant and LPA. The key issues raised are summarised below:
- 3.49 The majority of respondents supported the use of a 28 day determination period for applications.
- 3.50 Some LPAs, where they currently consider such amendments on an informal basis, commented that they endeavour to approve these in a shorter time period.
- 3.51 Other LPAs considered that if consultation is required as part of this application procedure, then a longer time period would be more appropriate to enable the representations to be considered.

##### **The proposed remedy for non-determination (Question Six b)**

- 3.52 71% (22 out of 31) of the respondents felt that a remedy is required. The second half of this question sought views on the most appropriate remedy in the event that an LPA fails to determine the application within the specified statutory determination period. The response to this were mixed, with strong support for and against a number of options. These are summarised below:

##### **Extension of time**

- 3.53 The ability of the LPA and applicant to agree, in writing, an extension of time for the determination of the application was considered an effective remedy by some respondents.

- 3.54 Some LPAs highlighted that, as the determination period is short, allowance should be made for other deadlines, holiday or other absences to be factored into the solution chosen.

### **Deemed consent**

- 3.55 Deemed consent generated the largest amount of support from respondents. Some of the respondents considered that this remedy should occur only after an additional 28 day time extension has been agreed between the LPA and applicant.
- 3.56 A number of respondents, including LPAs, made it clear that they strongly oppose the principle of deemed consent for this application as it may lead to the automatic approval of amendments that are material in nature.

### **Appeal**

- 3.57 A number of respondents support the use of an appeal mechanism under Section 78 of the TCPA 1990. Some respondents suggest that non-determination appeal should only be considered through the written representations procedure.
- 3.58 It was highlighted in a number of responses to the consultation that any form of appeal mechanism would prolong the process and therefore negate the objective of a quick decision.

### **Other solutions (referral to planning committee, refund, fresh application)**

- 3.59 The consultation generated a number of 'other' solutions to the failure of an LPA to determine the application in the 28 day period. These included the referral of the application to the planning committee, who would then decide on the materiality of the change. A number of respondents suggested that the fee should be returned, or a form of compensation provided to the applicant upon the failure to determine the application within the set determination period. It was also highlighted that, should an applicant be unhappy with the process, then they have the opportunity to make a 'fresh' application which has a right of appeal.

## **Response to representations**

### **The 28 day determination period (Question Six a)**

- 3.60 The proposed 28 day determination period for non-material applications is considered appropriate given the support expressed by respondents (91%, 31 out of 34 respondents) . This is the maximum

timeframe for determination and does not prevent the LPA determining the application in a shorter time period.

- 3.61 Given the nature of the changes sought through this procedure, it is not envisaged that consultation or publicity will be necessary. However, if an LPA considers that it is necessary, then responses to the consultation must be provided within 14 days. The need to consult should therefore not significantly affect the 28 day determination period; however, if necessary the LPA can agree in writing a longer period with the applicant.

#### **The proposed remedy for non-determination (Question Six b)**

- 3.62 Having considered the issues and the solutions proposed by respondents, we consider that allowing an extension to the time period for determination is the most appropriate mechanism. Reasons for not introducing the other options are explained below.

#### **Deemed consent**

- 3.63 Deemed consent as a remedy to non-determination received the highest levels of support from the consultation, it also generated the highest amount of concern from respondents. Deemed consent is not considered an appropriate solution to non-determination, as it could result in amendments that do have a material impact being approved by default without due consideration and scrutiny.

#### **Appeal**

- 3.64 We do not considered that minor amendments of this nature should be subject to an appeal for either refusal or non-determination of such applications. Introducing an appeal process would be disproportionate to the level of amendment that can be undertaken and would prolong the process of decision, which would be of detriment to the purpose of a quick timeframe.
- 3.65 An application will only be refused if it is deemed material. If the change is material, then an application to make this amendment may be made under Section 73 of the TCPA 1990 or by submitting an entirely new planning application.

#### **Other**

- 3.66 The other solutions suggested to remedy non-determination received varied levels of support and they are not considered to be an effective remedy to the failure to determine an application.

**E. Other comments from the consultation (Question Seven, Eight, Nine)**

**Q7. Are there any other issues that the draft guide at Annex 1 should cover in explaining the proposed procedure for approving non-material amendments? If so please specify what.**

**Q8. Do you have any comments to make about the draft partial Regulatory Impact Assessment at Annex 2?**

**Q9. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them: (on the consultation response form at**

- 3.67 A summary of the key issues and comments raised are provide below:
- A model application form and decision notice should be appended to the guidance for use by the applicant and the LPA.
  - The guidance needs to clarify if a non-material amendment can be made to a condition.
  - The guidance needs to clarify the position in respect of retrospective applications.
  - It should be made clear that the responsibility for supplying the appropriate amount of information to demine if an amendment is non-material rests with the developer. Should the developer not provide sufficient information, the guidance should refer to the correct procedure for the LPA to request the information required.
  - Notwithstanding the introduction of the new procedure, can the LPA agree non-material amendments informally through conditions attached to a consent.

**Response to representations**

- 3.68 A model application form is to be made available through the Planning Portal web-site.
- 3.69 A non-material amendment can be made to a condition, provided the amendment is non-material, and this is outlined in the guidance.
- 3.70 The guidance has been updated to ensure that clarity is provided in respect of: amendments to planning conditions, retrospective applications, and the procedure to request further information.
- 3.71 All LPAs must use the specific statutory procedure introduced by Section 96A of the TCPA 1990 for dealing with non-material amendments.



## **4. Full List of Respondents**

### **Local Planning Authorities**

Brecon Beacons National Park Authority  
Bridgend County Borough Council  
Caerphilly County Borough Council  
City and County of Swansea  
Denbighshire County Council/Conwy County Borough Council  
Flintshire County Council  
Gwynedd Council  
Neath Port Talbot County Borough Council  
Pembrokeshire Coast National Park Authority  
Pembrokeshire County Council  
Powys County Council  
Rhondda Cynon Taff County Borough Council  
Snowdonia National Park  
Vale of Glamorgan Council  
Wrexham County Borough Council

### **Businesses/Consultancy**

Huw Evans Planning  
Cardiff Airport  
Redrow Homes South Wales  
Planning Officer Society of Wales  
Network Rail  
Acanthus Holden

### **Professional Bodies/Interest Groups**

RICS Wales  
RTPI Cymru  
The Institution of Civil Engineers Wales Cymru  
The Law Society of England and Wales  
Renewable UK Cymru  
Energy UK

### **Government Agency/Other Public Sector**

Dwr Cymru  
Countryside Council for Wales  
One Voice Wales  
Welshpool Town Council

### **Voluntary Sector**

Group Gwalia Cyf.  
The Gower Society

### **Other / Individuals**

North Wales Association of Town and Larger Community Councils  
Country Land and Business Association