

**North Warwickshire
Borough Council**



**Practice Note
for
Handling Amendments to
Planning Proposals**

November 2009

1. INTRODUCTION

- 1.1 There is often change and alteration to development proposals as they progress from initial thoughts and ideas, onto the drawing board, and then through the planning process to approval and implementation. It is considered good practice to consider changes and alterations, where possible, prior to determination of an application, in order to minimise repeat applications and subsequent consultations. In addition, from 1st October 2009, amendments to the Town and Country Planning Act 1990 took effect, allowing the formal recognition of amendments after determination. Amendments vary in their type, meaning that procedures for each amendment vary depending on the circumstances of the amendment sought. Whilst common themes, such as re-consultation, will run through this practice, few Authorities have written guidance. The Human Rights Act 1998, also highlights the need for extra vigilance in assessing the impact of change on an individual.
- 1.2 The Council has therefore prepared this Note on how it will deal with amendments under Planning legislation. It deals with alterations and changes after the submission of an application and determination of it. These procedures should be explicit and accountable.
- 1.3 For the purposes of this Note, an amendment is defined as "... an alteration or a change to a submitted, or previously approved, development proposal". As such they are to be dealt with in the mainstream planning process; incorporated into recognised practice; and will not be treated differently.
- 1.4 There are three prime concerns:
- The first is the need for re-consultation and re-notification. People need to be kept informed of changes that are made.
 - Secondly, so long as the application remains undetermined, the Council will be seeking to make a determination within the appropriate target date. Notwithstanding that amendments can and do lead to delay.
 - Thirdly, amendments can make real differences, raising the quality of the final development, and be a valuable stage in the progress of a proposal.
- 1.5 The practice that follows, places an onus on all parties in the process – the applicant, the Council through its Case Officers, and those making representations.
- 1.6 Above all, this Note points to and emphasises the importance of the good practice of all applicants in seeking advice and guidance before an application is submitted. These negotiations can identify practical problems, as well as key issues that need to be addressed. Advice and guidance on raising the quality of a submission can also be given. However, they are not pre-determinations. The Council has a separate Note on Pre-application Meetings that is readily available from the Planning Control department.

- 1.7 This Note should be seen as one of several Practice Notes that the Planning Service has introduced in order to improve service delivery. A full list is shown in the footnote below.*

* *Footnote:*

At present these comprise the Council's Scheme of Delegation (April 2005). A Practice Note for handling Amendments to Planning Proposals; Policy for Investigating Unauthorised Development and the Enforcement of Planning Control; Supplementary Planning Guidance on Lighting Schemes, Residential Extensions and Shop Fronts; A Planning Application Checklist for Applicants; and the Planning Control Service Charter.

2. OUR APPROACH TOWARDS AMENDMENTS

a) Introduction

2.1 The definition of an amendment used in this Note is wide. It can include minor variations to a proposal, or it can extend to significant alterations that impact on the actual nature of the proposal itself. Furthermore, minor variations can be significant in their own right, depending upon the context. Amendments are sought before determination, after determination, and sometimes during the implementation of a scheme. The Council's approach will thus vary, depending on the significance of the amendment sought and when it is sought. In the first instance, a decision will need to be made as to whether or not the amendment is a minor variation, or a significant alteration. The remainder of this section describes the Council's approach in each of these circumstances.

b) Major Alterations

2.2 The decision as to whether or not an amendment is a significant change will rest initially with the Case Officers. A fresh application may be required for such a major change, regardless of whether the application has been determined or not.

2.3 There will be a strong presumption to require a fresh application if the proposal, as amended, is notably different from that which was submitted, as a matter of fact and degree, or if the description of the proposal has to be changed. The following questions will be asked by the Case Officers in their assessments:

- Has the application site changed?
- Is the original proposal enlarged in any manner?
- Does the nature, scope or character of the proposal change in a material way?
- Does the impact of the proposal on the locality change in a material way?

(It should be noted that if an applicant wishes to vary a condition attached to a permitted development, or to continue in non-compliance with a condition, then existing legislation requires that an application is submitted in any event.)

2.4 Experience shows that significant alterations are more likely to be put forward following the grant of a planning permission. This is usually because that permission has been "sold on" and a new applicant has different ideas, or because an applicant has had to reassess the viability of the proposal. If an amendment is sought after the grant of permission under the new provisions introduced in October 2009, and it is assessed to be a significant alteration, then that judgement will be made within 14 days of the receipt of the amendment, and an explanation given why a fresh application is needed. If an application remains undetermined when such significant alteration is submitted, the applicant will be asked to withdraw the original scheme and to resubmit. If this does not happen, then the Case Officer will consider the possibility of recommending a refusal. The applicant can also consider making an appeal against non-determination. In all cases, the Case Officer's assessment will be given in writing and be placed on the file.

c) Minor Variations: Pre-determination

- 2.5 Most amendments arise either from the consultation and notification procedure, or from the Case Officer's assessment of the proposal. It is one of their objectives to raise the quality of all development proposals whenever possible. Whatever the source, it is likely that the request to amend will come from the Case Officer. In the majority of cases, these amendments are minor variations to the originally submitted proposal. They usually affect only one aspect of a particular proposal. They do not alter the nature of the proposal itself. Nevertheless, these variations usually lead to a need for a different set of plans to those that the public originally saw. The people that were notified originally may wish to add further comments, or they may want to know what changes have been made as a result of their involvement. The most important procedural matter with minor variations is re-notification and re-consultation. Whilst an applicant may feel frustrated about a further round of consultation, the involvement of the community in the determination process is critical to a fair decision.
- 2.6 In the case of minor variations, the Case Officer will:
- On requesting an amendment from the applicant explain the reasons for this, and provide him with a time period in which to submit further plans, normally 14 days.
 - Once these plans have been received, re-notify all those who submitted representations on the original application, and any other parties that might now be affected by the amendment. An explanation will be given of the changes. The time period allowed for a response will normally be 14 days, less than the original 21 days. If the new plan directly overcomes an objection from someone who makes a representation, then no further period of consultation will be given. The person making that representation will, however, be notified how the matter has been resolved.
 - Deal with the responses received under the Council's Scheme of Delegation.
 - Send one reminder to the applicant if no new plans are received in the time requested, with a final cut-off time, pointing out that after its expiration, a determination will be made on the application without consideration of the new plans.
 - Notification of the decision taken will be sent, to all those who make representations and request notification of the decision on a proposal.
- 2.7 In this way, the Case Officer will attempt to balance the applicant's wish to get a plan approved as quickly as possible; to ensure that interested parties in the community can be kept informed of progress and participate in that process; as well as looking towards the Council's targets of achieving prompt determination.

d) Minor Variations: Post-determination

2.8 In the case where an application has already been determined, and an amendment comprising a minor variation is sought, then the Case Officer will:

- determine whether the amendment sought is material or non-material to the decision already made, and request the necessary forms, plans and information necessary in order to progress the amendment under the new provisions introduced in October 2009. Where the amendment is material, an application under Section 73 of the 1990 Act will be needed. For this, see the procedure set out in part (f) of this Note. Where it is non-material, an application under Section 96A of the 1990 Act will be needed.
- on receipt, in writing, inform all of those who made comments on the determined scheme, together with the Parish Council, with an explanation of what the changes are, and a time period in which to respond, normally 14 days;
- inform all of the relevant consultees, again explaining the changes and providing a 14 day consultation period;
- deal with the subsequent responses under the Council's Scheme of Delegation; and
- notify those who responded to the re-consultation of the decision taken.

e) Negotiations on an Application

2.9 Minor variations often relate only to one aspect or element of a proposal. They can usually be dealt with quickly and with full regard to the need to inform local people. Sometimes, however, the request for amendments arise from different sources, perhaps with competing viewpoints. The Case Officer will have to deal with these issues and come to a balanced assessment, before requesting amended plans. This may take time if negotiation and discussion takes place between officers, consultees, interested parties, and applicants. The outcome may not be a completely different proposal, but the proposals may have incorporated changed features. As the proposals are in effect still being formulated, the Council would prefer to deal with these types of amendments whilst the application remains undetermined, so long as the amendments do not alter the very nature of the proposal itself. As the application is still 'live', there can still be effective involvement of interested parties in the local community. In all cases the Council would prefer to achieve an agreed solution, even if that solution takes longer than the target date. However, the option of determining an application if no apparent progress is being made must always remain a possibility. In this type of case the Case Officer will:

- aim to keep the applicant informed of all consultation responses and representations received as soon as possible;
- aim to make one comprehensive request for amendment, which explains the reasons why, and outlines a time period for their submission; normally 14 days;

- on receipt of amended plans, re-notify all of those who were originally notified of the receipt of the amended plans, with an explanation of the changes that have been made. A further time period for responses will be given, normally 14 days. If it is clear that an amendment is received is only a partial solution and other plans or alterations are still to be made, then re-notification will be deferred for the time being. Re-consultation will take place when the full and final amended plans have been submitted. Parish Councils will be kept informed of progress and receive notification of the amended plans. Where a Member has expressed an interest, then they too will be notified.
 - re-notify on all subsequent amendments, or keep those that have made representations up to date;
 - in consultation and with the agreement of the Principal Planning Control Officer, reach a conclusion just before the expiry date as to whether or not the case should be determined on the situation as it stands. This will be recorded on the file. If the decision is to allow more time, a reappraisal will then take place at regular intervals. The applicant will be notified of these conclusions at each reappraisal, and be told when determination will take place and what that determination or recommendation will be. The applicant has the option to withdraw the application and to resubmit during this process.
- 2.10 Pre-application discussions play an important role in this type of case. Many of the responses from the consultees can be identified at this stage, and the proposals altered to meet their requirements, particularly on technical matters. Similarly, Case Officers can give advice and assistance on planning and design matters. Once the recommended target date has lapsed, the Council will expect amendments to be made swiftly and in line with the requests made. The risk of a refusal will be far greater towards the end of the target date particularly if there has been no movement towards changing a proposal in line with the request for amendment.

f) Variation of Conditions and Non-compliance with Conditions

- 2.11 An amendment that seeks to vary a condition attached to a permission, or to continue without compliance with a condition, will be the subject of an application under Section 73 of the 1990 Act. It is quite common for a Decision Notice to have, as one of its conditions, a list of specific plans approved under the permission. These can often be the subject of proposed amendments. If further amendments are sought, then the applicant has to submit a Section 73 application to vary the condition. However, this can take time, particularly if work is in progress on site. A balance has to be struck, and the Case Officer will make an assessment as to whether or not the amendment can be treated as a non-material variation under the provisions of paragraph 2.8 above, or whether it is material. In the latter instance, a Section 73 application will be required. This practice provides a balanced and pragmatic approach to the situation on the ground, whilst extending safeguards to those who have made representations.
- 2.12 In making the assessment, the Case Officer will consider whether or not the amendment has already been the subject of representation and discussion, and whether or not it introduces a completely new aspect or impact. A written assessment will be placed on the file, countersigned by the Principal Planning Control Officer.

2.13 Once permission has been granted and work is in progress on the site, further amendments are often still sought. The Case Officer will make an informed assessment. However, in these cases they must be made quickly, but fairly. The Case Officer may well have to consider the option of suggesting that a retrospective application is made, or indeed looking at the possibility of dealing with the case as unauthorised development. The Council's policy on Unauthorised Development is readily available from the Planning Control department.

g) Listed Buildings and Conservation Areas

2.14 Amendments sought to Listed Building applications or applications for Conservation Area Consent will be treated in the same way. However, in these cases, the determination will focus much more on detail. The impact of even small amendments on the character of a building or area can be critical. The 1990 Listed Buildings and Conservation Areas Act places a duty on Local Planning Authorities to have "special regard" to the architectural and historic character of Listed Buildings, and to the preservation and enhancement of the character and appearance of Conservation Areas. Expert advice will always be sought by the Case Officer before a conclusion is reached on amendments in these cases. It is to be expected that fresh applications will be far more likely in these cases. If applications have been referred to the Secretary of State under the 1990 Act, then amendments will also be referred.

3. PERFORMANCE AND MONITORING

3.1 This Practice Note makes explicit the Council's procedures for dealing with amendments, which should reduce delay, whilst ensuring that involvement is not compromised. It is one of several publications that together should improve the effectiveness of service delivery. In the case of this particular Note, we would wish to ensure that:

- the assessment of all amendments as to whether or not they are 'significant alterations' within 14 working days of their receipt;
- the determination of non-material minor amendments within 28 days of their receipt;
- the potential reduction in time from the date of a request for amended plans to their receipt;
- whether or not all those who are invited to make representations have been re-notified;

3.2 This Note introduces quality control measures to the amendment process:

- Evidence that each assessment as to whether or not a significant alteration is involved, has been placed on the file;
- Evidence of signed appraisals of each case where amendments are requested and the target date of determination has expired, has to be placed on the file;
- Evidence on the file of re-notification on the receipt of minor variations; and
- Evidence on the file of progress reports being given to those who have submitted representations.

3.3 The Council has a formal Compliments and Complaints Procedure. Should someone wish to compliment or complain about the Council's handling of an application and, in particular, with how it has dealt with an amendment, then the proper course of action will be first to write formally to the Borough Planning Officer. Forms and a note on procedures are available.

3.4 This Practice Note will be reviewed in December 2012 or sooner where required.