

**North Warwickshire
Borough Council**



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

March 2013

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.
- 1.2. Amendments are sought before determination, after determination, and sometimes during the implementation of a scheme. Amendments also vary in their type, meaning that procedures for each amendment are dependent on the circumstances of the amendment sought. These procedures should be explicit and accountable. The Council has therefore prepared this Note on how it will deal with amendments under planning legislation. It deals with alterations and changes both after the submission of an application and following determination of it.
- 1.3. 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 offers Supplementary Planning Guidance (SPGs) and general guidance on the Development Control pages of its website at www.northwarks.gov.uk/planning. It also offers a written pre-application enquiry service, and has a separate Note on Pre-application Meetings¹, also available on its website.
- 1.4. The revisions made to this Note update that set out in the November 2009 document, responding to changes in legislation and the need to balance best practice against the financial and time pressures on the Council.
- 1.5. This Note should be seen as one of several Practice Notes that the Development Control Service has introduced in order to improve service delivery. A full list is available on the Development Control pages at www.northwarks.gov.uk/planning.

¹ www.northwarks.gov.uk/downloads/file/3543/practice_note_for_pre-application_planning_meetings

2. OUR APPROACH TOWARDS AMENDMENTS

2.1. For the purposes of this Note an amendment is defined as “an alteration or a change to a submitted, or previously approved, development proposal”. Where amendments are made prior to determination, the procedure is for the Council to define. However, following amendments to the Town and Country Planning Act 1990 on 1st October 2009, amendments following the approval of a development proposal are dealt with in a more formal manner. As such they are to be dealt with in the mainstream planning process, incorporated into recognised practice, and will not be treated differently.

2.2. The following terms are used throughout this Note in the interests of clarity:

- **Appropriate target date** – the Council is tasked to deal with householder, minor and other applications within 8 weeks, and major applications within 13 weeks. Prior notifications have varying timescales, but are generally to be determined within 4 to 6 weeks, whilst applications accompanied by an Environmental Impact Statement carry a 16 week timeframe. Whilst non-material minor amendments should be dealt with within 4 weeks; minor amendments and applications to extend the time limit of a planning permission should be dealt with within 8, 13 or 16 weeks depending on the determination period for the original application.
- **Pre-determination amendment** – where the proposed amendment is sought during the course of an application (i.e. prior to the appropriate target date for determination). This is explained more fully in Section 3.
- **Major amendment** – where the proposed amendment fundamentally changes the nature of the development proposed. This is explained more fully in Sections 3 and 4.
- **Material minor amendment** – where the proposed amendment is considered to be a ‘material’ change to the development proposed and brings forward impacts which need full reconsideration. This is explained more fully in Section 4.
- **Non-material minor amendment** – where the proposed amendment is not considered to be a ‘material’ change to the development proposed, and its effect has little or no consequential impact on amenity, highway safety or other planning considerations. This is explained more fully in Section 4.
- **Extension of the timeframe allowed for implementation** – where a permitted development has not yet been implemented and further time is sought to enable the implementation to occur without having to re-submit a full application. This is explained more fully in Section 5.

2.3. It should be noted that whilst the above terms broadly outline the main groups of amendment, minor variations to a proposal can be significant in their own right, depending upon the context. 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 significant alteration or a minor amendment, and in the case of the latter whether it has material impacts. This decision will rest with the Council – more particularly the Case Officers – and where necessary reasons for this decision will be given.

2.4. There are three prime concerns:

- The first is the need for re-consultation. People need to be kept informed of changes that are made.
- Secondly, so long as an 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.

2.5. The practice that follows places an onus on all parties in the process – the applicant or agent, the Council through its Case Officers, and those making representations. A visual representation of the Council's approach is at Annex A.

3. PRE-DETERMINATION AMENDMENTS

- 3.1. 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 and minimise the impacts of all development proposals whenever possible. Whatever the source, it is likely that the request to amend will come from the Case Officer.

Minor Variations

- 3.2. In the majority of cases, these amendments are minor variations to the originally submitted proposal. They may affect one or more aspects of a particular proposal, but do not alter the nature of the proposal itself. These variations usually lead to a need for a different set of plans to those originally published for consultation. As such those originally notified 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 thus re-consultation. Whilst an applicant may feel frustrated about a further round of consultation, the involvement of interested parties in the determination process is critical to a sound and fair decision.
- 3.3. In the case of minor variations, the Case Officer will:
- 3.3.1. On requesting an amendment from the applicant explain the reasons for this, and provide them with a time period in which to submit further plans – normally no later than 14 days prior to the appropriate target date.
 - 3.3.2. Once these plans have been received, re-notify all those originally consulted and any other parties that might now be affected by the amendment. The time period allowed for a response will normally be 14 days, although this may need to be reduced.
 - 3.3.3. Deal with the responses received under the Council's Scheme of Delegation.
 - 3.3.4. If the new plans address a technical matter which does not have any effect on the appearance or outward effects of the development (such as reducing the extent of the red line on the site location plan or correcting a drafting error), then no re-consultation will take place unless it is regarded as necessary to do so.
 - 3.3.5. If the applicant does not provide new plans within the time requested, a final reminder will be sent along with a final cut-off time, pointing out that after its expiration a determination will be made without consideration of the new plans. This is to ensure the Council can maintain the balance between prompt determination and best practice.

Major Variations

- 3.4. A fresh application may be required for a major variation. 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. This decision will be made by the Case Officer based upon the following questions:
- Has the application site, as defined by the red line on the site location plan, 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?

Their decision shall be recorded on the application file.

3.5. If the Case Officer decides that the change requested constitutes a major variation, the applicant will be asked to do either of the following:

3.5.1. Withdraw the current application and resubmit – this will be the case if there are other outstanding matters which need addressing (such as an objection from a statutory or technical consultee). This will ‘close’ the current application and any resubmission will be treated afresh.

3.5.2. Provide an amended application form and plans, and supporting documents where necessary. The Case Officer will specify a time period in which to submit these amendments – normally no later than 14 days prior to the appropriate target date. The application will more than often be ‘re-registered’ when amendments are received, under the same reference number, and with the appropriate target date adjusted to count from the date of re-registration.

3.6. The Case Officer will:

3.6.1. In the case of withdrawn applications, notify all those who have made a representation *and* requested notification of the decision that no further action will be taken. Any resubmission is then treated in the normal manner.

3.6.2. In the case of ‘re-registered’ applications, notify all those originally consulted and any other parties that might now be affected by the amendment, offering the appropriate period for making further representations and noting that existing representations will be carried forward where relevant.

3.6.3. Deal with the responses received under the Council’s Scheme of Delegation.

3.7. If the applicant does not withdraw the application or provide an amended application, then the Case Officer will consider the possibility of recommending a refusal. The applicant can also consider making an appeal against non-determination if this option is available to them.

3.8. In this way the Case Officer will attempt to balance the applicant’s wish to get a plan approved as quickly as possible; ensure that interested parties in the community can be kept informed of progress and participate in that process; ensure that any decision is sound; and look towards the Government and Council’s targets of achieving prompt determination.

3.9. Notification of the decision taken will be only be sent to those who make representations *and* request notification of that decision on a proposal.

4. POST-DETERMINATION AMENDMENTS

- 4.1. Experience shows that 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 or comply with Building Regulations.
- 4.2. There are three manners of amendments applicable at this stage. These are ‘non-material minor amendments’, ‘material minor amendments’ and ‘major amendments’. Guidance is provided by the Department of Communities and Local Government on this topic², and the following text sets out the Council’s approach.

Non-material Minor Amendments

- 4.3. This procedure was introduced under Section 96A of the Town and Country Planning Act on 1st October 2009. This allows for amendments to a proposal which, as a matter of fact and degree, are not considered to bring about material impacts (such as insertion of an obscurely glazed window or a minor design change). This decision will be made by the Case Officer and their decision shall be recorded on the application file.
- 4.4. A Section 96A application can only be pursued in certain circumstances. Only a person who has an interest in the land to which the non-material amendment relates, or someone else acting on their behalf, can apply (e.g. a freeholder, a holder of a lease of over seven years, or a mortgagee).
- 4.5. Where the amendment is considered material, an application under Section 73 of the 1990 Act will be needed. The applicant will be notified of such a requirement within 14 days of receipt. For this, see the procedure set out in section 4.9 of this Note.
- 4.6. Due to the very nature of non-material minor amendments, it is considered that in order to qualify for this procedure, the effects of the amendment are considered to have no material impact on interested parties. Hence the Council will not seek to re-consult on such amendments, particularly when a decision must be made within 4 weeks.
- 4.7. Notwithstanding the above, anyone who owns or has a right to the land affected must be notified by the applicant; and the Case Officer may consider it prudent to re-consult some or all interested parties. This decision will lie with the Case Officer and they will:
 - 4.7.1. Inform those interested parties of the amendment, and a time period in which to respond, normally 14 days.
 - 4.7.2. Deal with the responses received under the Council’s Scheme of Delegation.
- 4.8. The Case Officer will then look to determine the application accordingly, attaching new conditions or varying/removing existing conditions where it is considered necessary. In light of both the variations being considered non-material, the applicant then has the option of implementing either the original permission or the amended permission.

² www.communities.gov.uk/publications/planningandbuilding/greaterflexibilityguidance

Material Minor Amendments

- 4.9. Most decision notices carry a condition outlining the approved plans relating to the development. Section 73 of the Town and Country Planning Act allows for variation or non-compliance with conditions, and this does not exclude “plan” conditions. The Material Minor Amendment procedure thus allows for a substitution of plans, either in full or in part.
- 4.10. 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 amendment under the provisions of paragraph 4.1 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.
- 4.11. Such amendments must relate to the development originally permitted. 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. This decision will be made by the Case Officer based upon the following questions:
- Has the application site, as defined by the red line on the site location plan, increased or extended beyond the original limits?
 - Has the original consent expired without implementation?
 - Does the nature, scope or character of the proposal change in a material way (i.e. is the development still accurately described by the original permission)?
- 4.12. This decision will be made by the Case Officer and their decision shall be recorded on the application file.
- 4.13. Where the amendment is beyond the scope of a Section 73 application, a fresh application will be needed. The applicant will be notified of such a requirement within 14 days of receipt. For this see the procedure set out in section 4.21 of this Note. In cases where the development is already underway, the application will have to be retrospective. Indeed if a fresh application is not received the Council will look at the possibility of dealing with the case as unauthorised development, for which the Council has a policy³.
- 4.14. On the rare occasion that no “plan” condition is attached to the original permission, it is first necessary to apply for non-material minor amendment under Section 96A (see 4.1 above) so to allow a new condition to be attached⁴. Following that, and assuming an approval, then a material minor amendment can be pursued.
- 4.15. A material minor-amendment cannot be made concurrently with an application to extend the time limits for implementing a planning permission (see section 5 below). If sequential applications are to be made, the extension should be applied for first, as a successful amendment application would result in a new permission which would not have been extant on 1 October 2010 and which therefore could not be extended.

³ www.northwarks.gov.uk/downloads/file/3544/

⁴ Note: this cannot be pursued in the case of Conservation Area and Listed Building Consents.

4.16. Where a material minor-amendment application is being considered, the Case Officer will:

4.16.1. Notify all those who were consulted on the original application, and any other parties that might now be affected by the amendment, offering the appropriate period for making representations.

4.16.2. Deal with the responses received under the Council's Scheme of Delegation.

4.17. It may be the case that material minor-amendments, following consultation, require further amendment. Section 3 of this Note will be relevant in such circumstances.

4.18. The Case Officer will look to determine the application accordingly, attaching new conditions or varying/removing existing conditions where it is considered necessary. Where approved, the effect is the issue of a fresh grant of permission. A decision notice describing the new permission will be issued, setting out all the conditions pertaining to it. However the time limit for implementation will be the latest date allowed by the original permission.

4.19. Notification of the decision taken will be only be sent to those who make representations *and* request notification of that decision on a proposal.

Listed Buildings and Conservation Areas (Material minor amendments only)

4.20. 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.

Major Amendments

4.21. Where an amendment is considered to be beyond the scope of Section 73 or Section 96A of the Act, then a fresh application will be required. This decision will be made by the Case Officer based upon the questions set out at 4.11. That judgement will be made within 14 days of the receipt of the amendment, and an explanation given why a fresh application is needed.

5. EXTENSIONS TO TIME LIMITS FOR IMPLEMENTING PLANNING PERMISSIONS

- 5.1. Planning permissions are generally granted subject to a condition requiring that it is implemented within 3 years. This is to prevent the “banking” of permissions in order to ensure the planning system continues to continuously deliver housing and employment premises. However the economic downturn has meant that many developments are being placed on hold – sometimes indefinitely. As unimplemented planning permissions expire beyond a set time limit, generally 3 years, the ability to implement the permission once finance is available can fall away. The Town and Country Planning (Development Management Procedure) Order 2010 allows for the implementation period on planning permissions, listed building consents and conservation area consents to be extended.
- 5.2. There are specific criteria which must be fulfilled in order to be eligible to exercise this allowance:
 - 5.2.1. Was the existing permission extant on 1 October 2010⁵? If not, an extension to the time limit cannot be pursued.
 - 5.2.2. Has the development already begun? If so, the permission is no longer extant and an extension to the time limit cannot be pursued. The only exception is where the application was submitted in outline and implemented in phases, and one or more of the phases has begun. Under these circumstances, the procedures apply as long as the development was permitted to be implemented in phases when the outline permission was originally granted.
 - 5.2.3. If applying to extend the time limit on an existing listed building or conservation area consent, is it associated with a planning permission which you are also applying to extend? If not, then you cannot apply to replace the listed building or conservation area consent.
- 5.3. An application to extend the time limits for implementing a planning permission cannot be made concurrently with a material minor-amendment. If sequential applications are to be made, the extension should be applied for first, as a successful amendment application would result in a new permission which would not have been extant on 1 October 2010 and which therefore could not be extended.
- 5.4. When making the application, alongside the mandatory requirements the Council may seek updated reports, information and drawings where the circumstances have altered since the time of the original application. Applicants are encouraged to seek advice from officers prior to submitting an application.
- 5.5. Where an application to seek an extension to the time limit is being considered, the procedure is quite similar to a material minor amendment. The Case Officer will:
 - 5.5.1. Notify all those who were consulted on the original application, and any other parties that might now be affected, offering the appropriate period for making representations.
 - 5.5.2. Deal with the responses received under the Council’s Scheme of Delegation.
- 5.6. The Case Officer will look to determine the application accordingly, having regard to whether circumstances have materially changed since the original grant of permission

⁵ The date specified in the legislation (www.legislation.gov.uk/uksi/2012/2274/pdfs/uksi_20122274_en.pdf) at the time of preparing this Note. This date may alter depending on whether subsequent amendments are made to legislation.

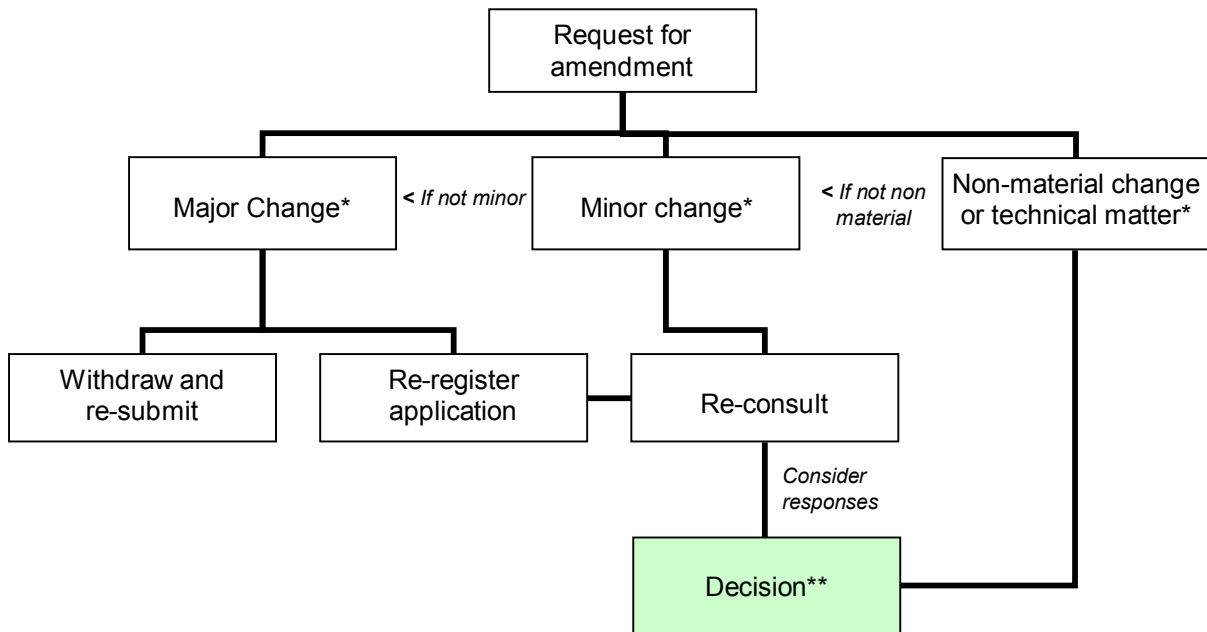
(e.g. other development had occurred adjacent to the site, or planning policy has changed).

- 5.7. They will attach new conditions or vary/remove existing conditions where it is considered appropriate (e.g. a pre-commencement condition has already been addressed). Where approved, the effect is the issue of a fresh grant of permission. A decision notice describing the new permission will be issued, setting out all the conditions pertaining to it.
- 5.8. Notification of the decision taken will be only be sent to those who make representations *and* request notification of that decision on a proposal.
- 5.9. This allowance does not apply to prior notifications where the time limits for implementation are set out in the General Permitted Development Order 1995 (as amended).

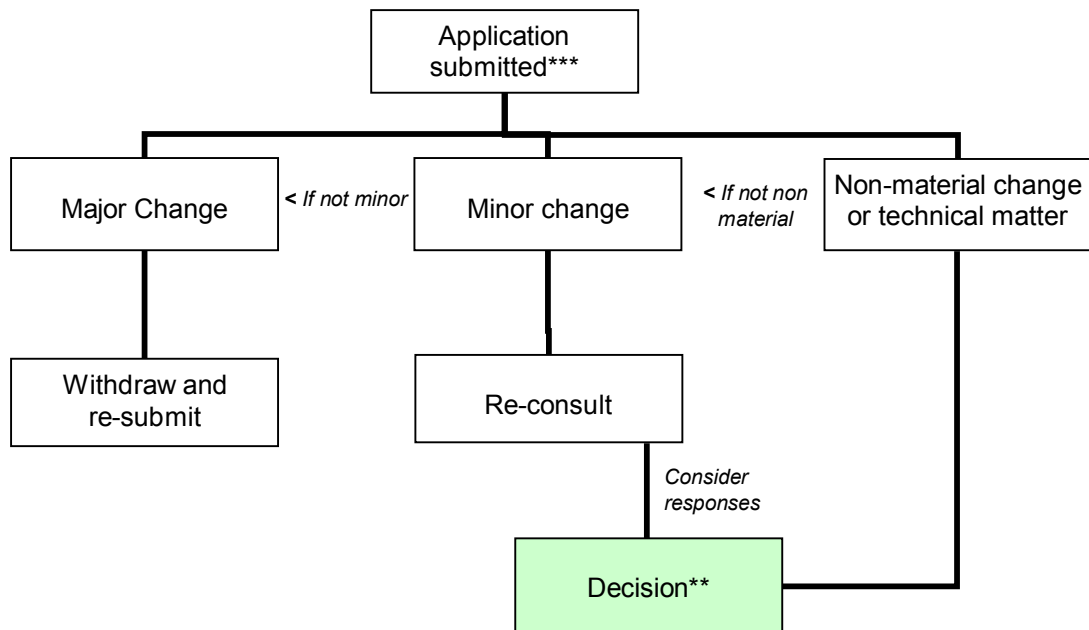
6. PERFORMANCE AND MONITORING

- 6.1. This 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:
 - 6.1.1. the assessment of all amendments as to whether or not they are "significant alterations" within 14 working days of their receipt;
 - 6.1.2. the determination of non-material minor amendments within 28 days of their receipt, and material minor amendments and applications to extend time limits within 8 weeks of their receipt;
 - 6.1.3. the potential reduction in time from the date of a request for amended plans to their receipt; and
 - 6.1.4. relevant interested parties as defined and required by this Note have been re-notified.
- 6.2. This Note carries quality control measures to the amendment process:
 - 6.2.1. evidence as to whether or not a non-material, material or significant alteration is involved is placed on the file;
 - 6.2.2. evidence of requests for amendments on undetermined applications is placed on the file;
 - 6.2.3. evidence of re-notification on the receipt of amendments is placed on the file; and
 - 6.2.4. in cases where amendments are requested and the appropriate target date of determination has been reached without receipt of amendments or sufficient time for their consideration; a signed assessment of the proposal is placed on the file.
- 6.3. 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 Head of Development Control. Forms and a note on procedures are available.
- 6.4. This Practice Note will be reviewed in March 2016 or sooner if required.

PRE-DETERMINATION



POST-DETERMINATION



Please note: for both pre and post determination amendments, the decision as to whether an amendment is major, minor or non-material lies with the Council

* Generally to be received no later than 14 days prior to the appropriate target date

** Target period for determination on non-material amendments is 4 weeks, whilst other amendments are subject to an 8, 13 or 16 week period, depending on whether the application is classified as Major or EIA development.

*** On applications for an extension to the time limit for implementation, these are treated as per the 'Minor change' route with the target period for determination set at 8, 13 or 16 weeks depending on whether the original application was classified as Major or EIA development.