

Non-Material Amendments and Minor Material Amendments

Guidance for applications made to Essex County Council

(Partially updated January 2021)

1) Non-Material Amendments

Legislative provisions

Non-Material Amendments (NMAs) are given legislative effect by S.96A Town and Country Planning Act 1990 (brought into force on 1 October 2009) via the commencement of s.190 of the Planning Act 2008. This stipulates:

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a 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.

It is noted that, where the change is non-material, s.96A allows new conditions to be imposed, or existing conditions to be removed or altered.

The CLG guidance 'Greater Flexibility for Planning Permissions' dated October 2010 states that 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. The LPA must be satisfied that the amendment sought is non-material before the grant of an application under s.96A. The term 'non-material' is also likely to cover many schemes that may have previously been classed as *de-minimis i.e. legally of no consequence*.

Submission

An application for an NMA may be applied for by or on behalf of a person with an interest in the land. This definition includes a freeholder, a holder of a lease of over 7 years (including sub-lessee), a mortgagee, or someone with an estate contract. If someone has an interest in only part of the land, the application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

The Essex County Council application form is available in a printable format at:

http://www.planningportal.gov.uk/uploads/appPDF/Z1585Form034_england_en.pdf.

More than one NMA can be applied for on the same form for a single fee.

No Design & Access Statement is required to be submitted with the application.

Before the application is made, the applicant must notify anyone who owns the land and the tenant of an agricultural holding, giving 14 days to make representations (in accordance with Part 2 Article 9(3) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 A(as amended) (DMPO). The applicant must record who has been notified on the application form.

Processing

Once a valid NMA application has been received by the County Planning Authority (CPA), it will have to be recorded on the Planning Register. The CPA will then write to the applicant confirming that the application has been received, and that the applicant should receive a decision within 28 days, unless a further timescale is agreed in writing.

An application under s.96A is not an application for planning permission therefore existing DMPO provisions relating to consultation and publicity do not apply. The CPA has discretion in whether and how they choose to inform other interested parties or seek their views. However, due to the scale of NMAs there would not need to be any publicity done for the application in the majority of cases. It is for each individual authority to decide whether they wish to notify the local member, and it is the view of the CPA that this should not be necessary in the majority of cases due to the nature of an NMA.

Essex County Council has taken the approach of adding the suffix '/NMA' to existing permission references to allow recording of each application. As multiple NMA applications may be received in relation to a single planning permission, the subsequent applications are given the suffix '/NMA2', '/NMA3' and so on.

Decision making

In considering materiality the CPA must have regard to the effect of the change, together with any previous changes made under s.96A, and take into account any representations made by anyone notified provided they are received within 14 days of notification. A decision should be made solely as to whether the proposal is or is not a non-material amendment. As it is not an application for planning permission, s.38(6) of the Planning Act 2004 does not apply. However, conflict with a reason for a previous decision may mean that the amendment is material. A list of possible procedural considerations (and other operational considerations) is detailed below in section 3. Planning Authorities are advised to create their own lists to aid consistency within the authority (**see Appendix A**)

The Planning Authority must give the applicant notice in writing of their decision within 28 days of receipt of the application or such longer period as may be agreed. It is not a reissue of the original planning permission (which still stands); the two documents should be read together. However, the Planning Authority has the power (a) to impose new conditions; and (b) to remove or alter existing conditions through this process. There is no right of appeal against refusal or non-determination.

2) Minor-Material Amendments (MMAs)

Definition

The suggested definition of 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.

This definition is not statutory.

Amended consultation requirements for applications under s.73 of the Town and Country Planning Act 1990 were brought into force on 1 October 2009, through the Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (SI 2009 No. 2261). This vehicle will often allow the consideration of an MMA under section 73, subject to there being a condition listing the approved plans, or the permission including a condition which is suitable for modification. If there is no suitable condition then it is not possible to use this procedure.

Note: It would be possible to apply to add a condition listing plans under s.96A of the TCPA 1990 (the non-material amendments procedure).

Submission

The Essex County Council application form is available in a printable format at:

http://www.planningportal.gov.uk/uploads/appPDF/Z1585Form025_england_en.pdf

Processing

A s.73 application is considered to be a new application for development consent under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Where the development is listed under either Schedule 1 or 2 to the 2017 EIA Regulations, and satisfies the criteria or thresholds set, it would require a Planning Authority to carry out a new screening exercise and, issue a screening opinion on whether an EIA is necessary. Where an EIA was carried out on the original application, changes to the ES may or may not be necessary.

LPAs now have discretion on which statutory consultees should be consulted under schedule 5 of the DMPO where an application under Section 73 of the Town and Country Planning Act is submitted. However, where the application is an EIA scheme, LPAs do not have any discretion to which bodies they consult.

Decision making

The application needs to be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004. Where an application under s.73 is granted, the effect is the issue of a fresh grant of permission. A decision notice describing the new permission should be issued, setting out all the conditions pertaining to it.

If sequential applications are made for both a minor material amendment and extension to the time limit for implementing a planning permission, the extension should be applied for first, as a successful s.73 application would result in a new permission which would not have been extant on 1 October 2010 and which therefore could not be extended.

The normal timescales for appeals apply, as set out in Article 33 of the DMPO. Appeals against refusal must be made within 12 weeks (for householder appeals) or six months (for other applications). All appeals against non-determination must be made within six months of the end of the determination period (8/13/16 weeks).

Appendix A

Check list for non-material amendments.

The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under s.96A. This list is not meant to be definitive.

The key test as to the acceptability of an application for a non-material change is whether the change is material to any development plan policy. If the answer is 'no', further tests are able to be applied, such as:

1. Is the proposed change significant in terms of its scale (magnitude, degree etc.) in relation to the original approval?
2. Would the proposed change result in a detrimental impact either visually or in terms of amenity?
3. Would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?

Items which would not normally be considered 'non-material' are listed below:

- Where the number/extent of previously approved 'NMAs' means that, cumulatively, the change cannot be considered to be non-material;
- Changes that would impact upon something that the planning officer regards as an important material consideration in the determination of the application, or that resulted in an objection raised during determination/at Development and Regulation Committee;
- Development which would require consultation with consultees other than the District/Borough/City Council;
- Extension of the time period to complete the development e.g. additional time to complete extraction/infilling/restoration
- Re-siting of buildings;
- Significant increase in the volume of a building;
- Significant increase in the height of a building;
- Changes to the site/application area;
- Changes which conflict with a condition;
- Additional or repositioned windows/doors/openings;
- Changes which alter the nature or description of the development;
- New works or elements not part of the original scheme;
- New works or elements not considered by any Environmental Statement submitted with the application;
- Development which raises new planning issues/material considerations that have not previously been considered;
- Where enforcement action has been taken in respect of compliance with approved plans.

There are also physical or operational aspects to a development that will be important although much more case specific. A list of possible criteria that would not normally be considered as non-material follows:

Built Form and Environmental Characteristics

- A development is likely to be re-sited by more than 0.2m in any direction where neighbouring buildings are in close proximity and look onto the development;
- A building is likely to be re-sited by more than 0.5m in any direction where neighbouring buildings are over 20m away and/or look onto the development; or, any amendment which would move a building off the approved footprint by more than 25%;
- Any amendment which creates built form forward of the front/principal elevation;
- Any increase in the approved site area or floorspace greater than 3% or increase in the volume of a building by more than 6%;
- Additional doors and windows that would discernibly affect the external appearance of the development;
- Additional or altered doors or windows that could harm the privacy or visual amenity of the nearby properties;
- The relocation or replacement of plant (e.g. air conditioning, extractor outlets or boiler exhausts) that would materially affect the appearance of the development or increase noise level to a level perceptible to the human ear;
- Changes that would adversely affect the design of a development (including the loss of details or use of lesser quality materials);
- Any amendment which relates to the provision of two or more new pieces of development;
- Any amendment which would reduce the root protection area to or result in compromising or the loss of a tree considered to be of significant amenity value;
- The development would impact upon the character or appearance of a Conservation Area or the setting of a listed building;
- Development which results in a loss of parking/manoeuvring/access facilities so that it falls below a maximum standard;
- Any sub-division of floor area or site area to create a new unit or site operation;
- Any operation that would result in conflict with any planning condition or reason for imposition;
- Any reduction in the size of the development by more than 3% of the floorspace or 6% of the volume;
- Any alteration to the development which result in a discernible increase in pedestrian or vehicular traffic;

Mineral Extraction and Waste Disposal Operations

- Increases in the height/size/volume of a building or plant/machinery that would increase the development beyond those criteria referred in to in the previous list;
- Changes to the extraction or filling area which would increase volumes to such a point that other operational conditions need to be varied;
- Increase in extraction area;
- Changes to the types of material to be used for infilling that would give rise to differing land use impacts than those approved;
- Changes to the types of material extracted that would result in different processing requirements to those already permitted at the site;
- Changes to any plant and machinery or processing operations that would increase the noise level beyond permitted limits;
- Changes to any plant and machinery or processing operations that would require an amendment to any agreed scheme to mitigate environmental impacts;
- Any alteration to the development which would result in a material increase in pedestrian or vehicular traffic.