



## Planning • Historic Buildings • Archaeology

Specialist & Independent Advisors to the Property Industry

### Proposed changes to extant planning permissions

In response to the recession and its impact upon the property development industry, Communities and Local Government is proposing the following changes to extant planning permissions where:

- The permission is soon to lapse because development has not yet commenced and;
- "Minor" and "Non material" amendments are sought to the extant consent.

The objective of these proposed measures is to remove the requirement to have to submit a whole new application and the associated time and costs of doing so and hence delay of the economic recovery. These proposed changes are subject to public consultation until 13 August 2009.

Outlined below is a summary of the proposed changes.

#### 1. Extending the Lifetime of "Major" Extant Permissions

The consultation paper makes the following proposals for extending the life time of major developments with extant planning permissions:

- Major developments are defined as being:
  - Residential developments of 10 houses or more or on sites above 0.5 hectares
  - More than 1,000 sq m of floorspace
  - Sites of more than 1 hectare
  - Waste development and the winning and working of minerals.
- For such developments with extant consents on or before 1 October 2009, applicants will be

able to apply for a separate planning permission that seeks to just extend the time period for implementation of the development.

- The sought extension of the time period could be for a further default period of 3 years and 2 years for the approval of reserved matters, or if appropriate, given special circumstances longer than this default period.
- In making such an such an application, it is envisaged that it will not be necessary to supply extensive information; the only requirement could simply be to identify the extant consent, accompanied by the application form and ownership certificates. Design and Access Statements will also not be required.
- However, if the development falls within Schedule 1 and 2 of the 1999 EIA Regulations, a new screening opinion will be required to ascertain whether the Local Planning Authority consider whether an Environmental Impact Assessment is required with the application.
- There can be no changes to the planning permission other than permitted scheme.
- Local Authorities should take a positive and constructive approach to such applications and the development proposed in an application for extension of the time period will be judged to be acceptable unless there has been a significant change in the material planning considerations since the grant of the original planning permission.
- If the application is refused there is still the right to appeal against the decision.
- There may be the need to amend through a supplementary deed or a fresh obligation so that the new permission is bound with previous section 106 agreements.
- The planning application fee will be a flat rate of £170.

## 2. “Minor Material” and “Non Material” Amendments to extant consents.

The consultation paper now proposes a distinction between “non material” and minor material amendments to extant consents.

In both case the overall objective is to remove the need to have to re-apply for planning permission in those circumstances where relatively small changes to schemes are being sought to implement the extant consent.

### “Minor material amendments” to extant consents

- Local Planning Authorities should in the future attach condition(s) to the permission specifying the approved plans.
- Through an application to vary the condition(s) under section 73 of the 1990 Town and Country Planning Act, it would then be possible to substitute the approved plans with the plans now sought to implement the proposed minor material amendments.
- Where such an application is approved the effect will be that a new consent is issued, which sets out all of the conditions pertaining to it.
- There would not be the possibility of extending the time limit for the implementation of the permission.
- Such an application could require an Environmental Impact Assessment and consequently prior to the submission of the application a screening opinion from the Local Planning Authority as to whether a EIA is required will be necessary.
- Information requirements in support of such applications, including the need for Design and Access Statements still to be determined pending the outcome of the Government’s response to the Killian Pretty Review.

### For “non - material amendments” to extant consents

- The proposal is that applications should also be submitted on a standard application form

for minor amendments to extant consents. However, this would not constitute an application for planning permission as it would be an application under section 96A of the Town and Country Planning Act as enabled by Section 190 of the 2008 Planning Act. Nevertheless a flat fee of £170 is proposed to determine such applications.

- Consequently, provisions for statutory consultation do not apply - although it is proposed that it should be a requirement to notify again those previously consulted on the original application under article 6 of the GDPO.
- However, given that the majority of cases will not require consultation or publicity decisions should be made within 28 days of the receipt of the application.
- In making their decision, which has to be in writing, Local Planning Authorities will need to assess the effect of the proposed change to the planning permission as originally granted.
- The application can only be made by or on behalf of a person with an interest in the land and must be recorded on the planning register.
- The definition of “non material” is to be a matter for Local Authority discretion.

### Assessment

These measures are a positive measure and should be welcomed by the property development industry during this period of economic downturn.

There are however some inherent tensions between the need to make permission more flexible and the decision is “fast tracked through” the planning system, whilst at the same time ensuring that third parties do not have the opportunity to challenge decisions through judicial review as a result of these proposals.

For example, there will still be need to ensure that such developments do not conflict with the Environmental Impact Regulations by ensuring that these development do not require an EIA through a screening opinion.

There is also the issue as to whether minor material amendments to extant consents can actually be achieved by seeking to vary the condition that

identifies the approved plans. There will be many examples of where the approved plans are not specified as a condition and consequently the ability to change the permission through this route is not possible.

Local Planning Authorities will also still have the discretion of deciding what is non material.

Nevertheless these measures are a pragmatic attempt to help the development industry respond to these difficult economic times.

As it is highly likely that the measures will be approved it is recommended that developers, investors and occupiers review their extant consents where they were granted before 1 October 2009 and consider taking up the opportunity to extend the lifetime of the permission.

Similarly, where the scheme is no longer viable and to help make them so it might be necessary make amendments to the design and external appearance of the development, preparation for such negotiations under the new system should be considered.

Representations to the consultation documents proposals need to be submitted by 13 August.

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