

Explanatory Memorandum to:

The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014;

The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014; and,

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014.

This Explanatory Memorandum has been prepared by Department for Housing and Regeneration and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014;
- The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014; and,
- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Housing and Regeneration

3 July 2014

1. Description

- 1.1 The statutory instruments make provision for two procedures. These are;
- non-material amendments to existing planning permissions; and,
 - corrections of errors on decision notices.
- 1.2 For ease of reading these are discussed separately throughout this Explanatory Memorandum where required.

Non-material amendments

- 1.3 Non-material amendments to an existing planning permission are normally minor changes to an approved development proposal that have no material effect on the overall context of the development scheme or its surroundings.
- 1.4 There is currently no statutory process in place for ratifying non-material amendments to an existing planning permission in Wales. Therefore the approach taken by local planning authorities (LPAs) in dealing with such changes varies across the country.
- 1.5 Some LPAs are prepared to approve non-material amendments in an informal manner, whilst others refuse to do so and require the submission of a further full planning application. The recent reviews of the planning system in Wales confirm that this situation results in uncertainty, delay and additional cost for the applicant, additional work for some LPAs and often unnecessary further consultation with stakeholders.
- 1.6 These Statutory Instruments will introduce a statutory procedure for approving such amendments to an existing planning permission. This will provide greater flexibility and certainty that such amendments can be made and a more consistent approach for their determination.

Corrections of errors on decision notices

- 1.7 There are occasions where the Welsh Ministers or an inspector may issue a planning decision notice, which contains an obvious and correctable error. It is important that there is a procedure in place to ensure the speedy correction of a decision notice in such circumstances.
- 1.8 At present, the correction of errors is dealt with at sections 56-58 of the Planning and Compulsory Purchase Act 2004. This gives the Welsh Ministers and Planning Inspectors power to correct an error which is contained in any part of the decision document which records the decision, but which is not part of any reasons given for the decision. The Welsh Ministers or Inspectorate may only correct the error where the consent of the applicant has been received (Section 56(3)(c)). However, it has become apparent that the permission of the applicant should not be required for such corrections as they will not affect the reasons for the

decision, the decision is not void at any point, and the correction is purely to address minor issues such as typing errors or incorrect references, which do not prejudice neither the local planning authority or the applicant.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This Explanatory Memorandum covers three separate Statutory Instruments; two subject to the affirmative procedure and one subject to the negative procedure. For clarity these are identified below:

Statutory Instruments subject to the Affirmative procedure

- The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014; and,
- The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014;

Statutory Instrument subject to the Negative procedure

- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014.

2.2 A composite Explanatory Memorandum has been prepared for these Statutory Instruments due to the interlinked nature of the legislation they describe.

2.3 The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014 provides for two separate legislative processes - non-material amendments to existing planning permissions and the corrections of errors on decision notices. These are contained on a single order as they both relate to sections of the Planning Act 2008.

2.4 The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014 introduces a power to make non-material amendments to a planning permission. To create the necessary process to accompany this power, the two other Statutory Instruments: The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014, and The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014, are required to introduce a simple procedure for determining non-material amendments to planning permissions and introducing the fee that will accompany such an application.

2.5 The failure to introduce one of the SIs identified above will mean that the procedure will not be introduced or be able to operate in practice. On this basis, it is considered appropriate to create a composite Explanatory Memorandum that explains and assess them as a single process.

3. Legislative background

Powers

The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014.

- 3.1 Section 203 of the Planning Act 2008 gives the Welsh Ministers the power to make provision by order which has an effect in relation to Wales that corresponds to the effect sections 184 and 190 have in relation to England. Section 184 amends section 56(3)(c) of the 2008 Act so as to remove the requirement in England for the Secretary of State or an Inspector to obtain the consent in writing of the applicant and, if different, the owner of the land before the Secretary of State may correct an error in a decision notice. Section 190 inserts section 96A into the Town and Country Planning Act 1990 which enables local planning authorities in England to make non-material changes to planning permission.
- 3.2 Section 203(6)(a) provides that an order made under section 203 may amend, repeal, revoke or otherwise repeal a provision of an Act.
- 3.3 Section 203(8), gives the Welsh Ministers the power to make provisions which are consequential, incidental or supplementary to the provisions that correspond to England only provisions.
- 3.4 This instrument is subject to approval of the Assembly (the affirmative procedure).

Town and Country Planning (Development Management Procedure) (Amendment) (Wales) Order 2014

- 3.5 The making of this Order is dependant upon the making of the Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014. Section 96A(5A) of the 1990 Act (inserted by the Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014) provides that a development order may provide that an application under subsection (4) to a local planning authority in Wales must be made (a) in the form prescribed by the order or published by the Welsh Ministers, and (b) in the manner prescribed by the order.
- 3.6 Section 96A(8) of the 1990 Act confers a power upon the Welsh Ministers to prescribe in a development order such requirements that a local planning authority must comply with as to consultation and publicity in relation to the exercise of their power to make non-material changes to planning permission.
- 3.7 The negative procedure applies to this Order.

The Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014.

- 3.8 Section 303(1) of the 1990 Act provides that the Welsh Ministers may by regulations make provision for the payment of a charge or fee to a local planning authority in respect of the performance of such an authority in any of its functions.
- 3.9 This instrument is subject to approval of the Assembly (the affirmative procedure).

4. Purpose & intended effect of the legislation

The issue

Non-material amendments

- 4.1 The Town and Country Planning Act 1990 (in so far as it applies to Wales) does not provide a specific provision for amendments to be made by an individual planning authority to any planning permission granted by them. With no statutory process for ratifying non-material amendments to an existing planning permission, the approach taken by local planning authorities (LPAs) in dealing with such changes varies across Wales.
- 4.2 This is evidenced through the ‘Study to Examine the Planning Application Process in Wales’ (June 2010). In its analysis of responses received to a questionnaire sent to all LPAs, it identified that 24% of LPAs have protocols in place for dealing with non-material or minor material amendments to planning permissions. Paragraph 7.7 of the Study states,

“currently there is no standard procedures for this – with some authorities operating a flexible system and others finding it difficult to see any changes as minor or non-material (or employing a very rigid philosophy to this area)”.
- 4.3 Increased uncertainty of both LPAs and developers about the level of flexibility that exists to make minor amendments to existing planning permissions, resulted from the case *Sage v Secretary of State* (2003). This case gave rise to the view that developments must be built entirely in accordance with the approved plans and that any deviation from those plans renders the development unauthorised. This has led to more LPAs refusing to deal with non-material amendments to planning permissions and requiring applicants:-
- to submit a further full planning application to make relatively small changes to their approved development; or,
 - to apply for a Certificate of Lawfulness to test whether the changes are de minimis.

- 4.4 As a result, an inconsistent approach by LPAs to approving non-material amendments currently exists. Some LPAs are prepared to approve non-material amendments in an informal manner, whilst others refuse to do so and require the submission of a further full planning application.

Corrections of errors on decision notices

- 4.5 A change is required to section 56 of the 2004 Act to allow for the Welsh Ministers or appointed persons to make changes to a decision notice which do not prejudice either party and without the consent of the applicant. At present, attaining the consent of the applicant can increase the length of time that it takes to issue a corrected decision notice significantly.
- 4.6 Section 184 of the 2008 Act amends section 56(3)(c) of the 2004 Act so as to remove the requirement in England for the Secretary of State or an inspector to obtain the consent in writing of the applicant and, if different, the owner of the land before he or she may correct an error in a decision document. We wish for a similar power to apply in Wales using powers at section 203(1) of the 2008 Act.

Purpose and Intended effect

Non-material amendments

- 4.7 By introducing a statutory procedure for approving such amendments through these statutory instruments, it will:
- Provide a legal basis for making non-material amendments to existing planning permissions, thus providing greater certainty to both LPAs and applicants as to the ability to make such amendments.
 - Provide a more responsive planning system that gives greater flexibility to applicants to take account of changes as the design and development process unfolds. This will allow applicants to respond and adapt more efficiently, quickly and cost effectively where the need to make a non-material amendment to an existing permission becomes apparent.
 - Provide greater certainty and transparency about the process and procedure by which non-material amendments can be made to permissions, thus reducing the risk of challenge to the approach taken by the LPA, or to their eventual decision.
 - Allow a more proportionate approach to approving non-material amendments in cases where an entirely new application is not justified. This will reduce unnecessary delay, uncertainty and expense for applicants, as well as unnecessary time and expense for LPAs.

- Provide a more consistent approach between LPAs to determine these amendments.
- 4.8 The Statutory Instruments will introduce the following aspects of the procedure.
- 4.9 The purpose of the Planning Permission (Non-Material Changes and Corrections of Errors) (Wales) Order 2014 is to introduce express power for a local planning authority to make a change to a planning permission if it is satisfied that that change is not material. In determining whether a change is material, a local planning authority must have regard to the effect of the change and any previous changes made under section 96A to the original planning permission. It provides that a local planning authority can only make a non-material change to a planning permission if an application is made by a person with an interest in the land (which is defined). It also removes the requirement for consent to the correction of errors in decision documents. .
- 4.10 The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014 prescribes the application procedure that must be followed when submitting an application under Section 96A of the TCPA 1990. This includes how an application is made, what consultation and notification procedures must be undertaken by the local planning authority, and the time period in which a local planning authority must determine the application.
- 4.11 The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014 introduce a fee for the determination of an application submitted under section 96A of the TCPA 1990. The Regulations also provide for an exemption from fees in relation to the provision of access to or within a dwellinghouse for a disabled person and in certain cases where permitted development rights have been withdrawn
- 4.12 Details of who will be affected by these proposals are analysed in detail in part 2.

Correction of errors

- 4.13 Article 3 of The Town and Country Planning (Non-Material Changes and Corrections of Errors) (Wales) Order 2014 makes provision which has effect corresponding to section 184 of the Planning Act 2008. Section 184 removed the requirement in section 56 of the Planning and Compulsory Purchase Act 2004 in relation to England, that the appropriate consent must be obtained to an error in a decision document being corrected. The amendments in Article 3 remove the requirement to obtain consent to the correction of errors in decision documents in relation to Wales.
- 4.14 This will provide a more certain, transparent and responsive planning system to allow for an accurate decision notice to be issued at the point in which an error is detected, rather than undertaking a potentially lengthy process of attaining the consent of the applicant. Such a change will

provide greater certainty to both LPAs and applicants when such amendments occur. The change will also remove the need for applicants, and land owners, to consider and respond to matters which are of little consequence to them, and to which they are unlikely to respond to.

Risks if legislation changes are not made

Non-material amendments

4.15 If the proposed statutory instruments are not introduced, the following issues may continue:

- Continued uncertainty about the level and flexibility that exists in the planning system to make non-material amendments to existing planning permissions.
- Continued uncertainty and lack of transparency about the process and procedure by which such amendments can be made to permissions, which could result in greater risk of challenges by judicial review to the approach taken by the LPA, or to their eventual decision.
- An inconsistent approach by LPAs to dealing with such amendments.
- Continued inflexibility in the planning system to deal with such amendments in a proportionate manner.
- Continued delay, additional costs and additional work for applicants and LPAs where full planning applications are used to make relatively small changes to approved developments.

Corrections or errors on decisions notices

4.16 If the proposed statutory instrument is not introduced, the following issues may continue:

- Continued delay, additional costs and work for applicants and the Welsh Ministers where corrections to decision notices are required;
- Situations where the applicant would simply not respond to an amendment request; and
- Continued uncertainty as to whether the decision document is extant during the period in which permission is sought for an amendment to be made to a decision notice.

5. Consultation

5.1 Details of consultation undertaken are included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

PART 2.A. NON-MATERIAL AMENDMENTS

This section assesses the impact of:

- The Planning Permission (Non-Material Changes and Correction of Errors) (Wales) Order 2014 (Excluding Article 3);
- The Town and Country Planning (Fees for Non-material Changes) (Wales) Regulations 2014; and,
- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014.

6. Options

6.1 The following options are considered:

- **Option 1: Do nothing** – Continue to approve non-material amendments to an existing planning permission on a non-statutory basis and in an inconsistent manner. Local planning authorities (LPAs) and applicants will therefore continue to deal with such amendments in either an informal manner, or by requiring the submission of a further full planning application.
- **Option 2: Introduce a statutory procedure for approving non-material amendments to an existing planning permission** - To apply the provisions in Section 96A of the Town and Country Planning Act 1990 (TCPA 1990) to Wales, in order to introduce a statutory and consistent procedure for LPAs and applicants to make such amendments to an existing planning permission.

7. Cost and Benefits Analysis

7.1 The sectors most likely to be affected by the proposals for making non-material amendments to an existing planning permission include:

- **Businesses** seeking to make minor changes to their approved development proposals.
- **Local Planning Authorities** (LPAs) who determine applications for planning permission.
- **General Public / Household**ers that may have an interest in the approved development proposal, or wish to make minor changes to an

existing planning permission to extend or improve their property.

7.2 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1 – Do nothing

Businesses

7.3 Indirect and direct costs to *businesses*:

- The current arrangements will continue with some LPAs requiring applicants, such as businesses, to submit a further full planning application to make non-material amendments to their approved development. This generates additional costs to businesses by the payment of an additional statutory fee (currently varies between £166 to a maximum of £250,000), and costs associated with producing a valid planning application, e.g. supporting information such as plans, drawings, technical reports, and agent fees to prepare, submit and manage the application.
- Where non-material amendments are approved in an informal manner by the LPA (where no fee is charged), applicants such as businesses will continue to access this service free of charge.

Local Planning Authorities

7.4 Indirect and direct costs to *local planning authorities*:

- Where a further full application is sought by the LPA to make a non-material amendment to an existing planning permission, it will continue to be accompanied by the associated statutory fee. This can be a significant fee for the consideration and determination of an amendment to an approved development proposal that is minor and non-material in nature.
- The resubmission of a full planning application will also require the LPA to reconsider and assess the plethora of information that accompanies it. Some of which will be identical to the original planning application and have no bearing on the proposed amendment. They will also have to re-examine the principal of the development in addition to the amendment being sought, which the LPA will have already considered and approved as part of the original application. The resources required to deal with such amendments in this manner could be utilised more effectively within other areas of its planning function.
- Where non-material amendments are dealt in an informal manner by the LPA, it will continue to process and determine such requests free of charge to the applicant.

General Public / Householders

7.5 Indirect or direct costs to the *general public / householders*:

- The existing arrangements will continue with some LPAs requiring householders to submit a further full planning application to make non-material amendments to their approved householder development proposals. This will generate an additional cost for householders by having to pay an additional statutory fee for making such amendments - currently £166 for an application relating to one dwelling and £330 for an application relating to two or more dwellings.
- Where an informal approach is taken by the LPA to such amendments (where no fee is charged), householders will continue to access this service free of charge.

Benefit Analysis for Option 1 – Do nothing

Businesses

7.6 Indirect or direct benefits to *businesses*:

- There are no significant indirect or direct benefits for businesses. The approach taken by LPAs in dealing with non-material amendments to existing planning permissions will continue to vary across Wales, creating uncertainty for these sectors in the ability and process for making such amendments.
- Requiring applicants such as businesses to resubmit a full planning application to make such amendments will continue to result in delay, cost and uncertainty to this sector. This is due to an 8 week statutory period that LPAs have to determine a full planning application that does not require an Environmental Impact Assessment, and the cost of producing the necessary information to support a valid application in addition to the application fee. Such an application also enables the principle of the whole development to be re-examined, which provides greater uncertainty to the applicant.
- Businesses will therefore continue to experience a disproportionate approach to making and processing such minor amendments. This may deter them from making such changes, which could enhance the approved development, or change their development proposal to enable them to respond more efficiently to their changing operational requirement.
- Where an informal approach is taken by the LPA to such amendments, the lack of a formal and transparent process will continue to result in a greater risk of challenge by judicial review to the approach taken by the LPA, or to their eventual decision. This greater risk of challenge creates

uncertainty for applicants, in particular when implementing the changes approved by the LPA during the 3 month challenge period. Should the approach taken or the decision made by the LPA be challenged, then this will also result in costly delays to the applicant.

Local Planning Authorities

7.7 Indirect or direct benefits to *local planning authorities*:

- There are no apparent indirect or direct benefits for LPAs.
- The uncertainty of LPAs as to the level of flexibility that exists for making non-material amendments to an existing planning permission, which resulted from the *Sage v Secretary of State* judgement, will remain. Consequently, the approach taken by LPAs for dealing with such amendments will continue to vary across Wales.
- Where non-material amendments to an existing planning permission is dealt in an informal manner by the LPA, the lack of a formal and transparent process will continue to result in a greater risk of challenge to the approach taken, or to their eventual decision. This could result in significant costs to the LPA in defending any challenge.

General Public / Householders

7.8 Indirect or direct benefits to the *general public*:

- The inconsistent publicity and consultation arrangements undertaken by LPAs across Wales when dealing with such amendments will mean that the experience and ability of the general public to find details on such requests / applications, or to engage in the process, will continue to vary across the country.
- Where the LPA requires the re-submission of a full planning application to make these amendments, formal publicity and consultation processes must be adhered to, as set out in The Town and Country Planning (Development Management Procedure) (Wales) Order 2012. This enables the public to find out for themselves details of such applications or associated decision notices, and also provides an opportunity to engage in the process. However, members of the public may be informed or consulted on applications that may not be of interest to them, as they may relate solely to amendments that are minor and non-material in nature, and are unlikely to have an impact on them.
- Where an informal approach is taken by the LPA to such amendments, the request made and the decision reached by the LPA will not be formally publicised. Members of the public will therefore continue to be

unaware of such requests and decisions.

7.9 Direct benefit to the *householder*:

- The approach taken by LPAs in dealing with non-material amendments will continue to vary across Wales. As a consequence, the ability of householders to make such amendments to an existing planning permission to extend or improve their property, will also continue to be governed by the approach adopted by the LPA in dealing with such amendments; i.e. whether or not the LPA is prepared to deal with such changes without requiring the re-submission of a full planning application.

Cost Analysis for Option 2 - Introduce a statutory procedure for approving non-material amendments to an existing planning permission.

Businesses

7.10 Direct costs to *businesses*:

- The new statutory procedure will enable businesses to make non-material amendments to an existing planning permission without the need to submit an entirely fresh application. This will provide direct cost savings for this sector especially when the proposed amendments relate to larger development proposals.
- The submission of a fresh application requires the payment of an additional statutory fee, which currently can vary from between £166 to a maximum of £250,000 depending on the size of the development. In comparison, the proposed procedure for making such amendments would only require the payment of a flat rate fee of £25 for householder applications and £83 for other applications. A cost saving would therefore be achieved, in particular where applications for non-material amendments relate to larger development proposals.
- The 'Study to Examine the Planning Application Process in Wales' through Practice Pointer 12¹ provides an example where an LPA has required the re-submission of a full planning application to make minor amendments to an approved scheme. In the example provided, the applicant was required to pay an additional statutory fee of £1,264 for making the proposed minor amendments. When applying this example to the new procedure, assuming that the amendments sought were non-material in nature, the applicant would have had to pay a flat rate fee of only £83, resulting in a possible saving of £1,181.

7.11 Indirect costs to *businesses*:

- Savings will also be achieved on the administration and production costs

¹ Practice Pointer 12 (pages 70 and 71), Study to Examine the Planning Application Process in Wales (July 2010), GVA Grimley

of making an application for non-material amendments. In comparison to submitting a full planning application, applicants, such as businesses, will be required under the proposed procedure to satisfy more proportionate information requirements to support their application. The determination period for the proposed procedure is also much quicker in comparison to that of a full planning application, resulting in administration time and cost savings for the applicant.

7.12 Direct cost to *businesses*:

- Where non-material amendments to an existing planning permission are dealt in an informal manner by the LPA, it is understood that no fee is charged for the consideration of such changes.
- In this circumstance, the new procedure will require applicants, such as businesses, to pay a flat rate fee for making such amendments (£25 for householder applications and £83 for other applications). This is necessary to support a more formal and robust process for making and determining applications for non-material amendments, which in turn will ensure that they are determined in a more structured, transparent and consistent manner across Wales. A more formal and robust process will also benefit applicants by providing greater certainty and clarity about the process and timescales in approving such applications. It will also reduce the potential risk of challenge by judicial review to the approach taken by the LPA, or to their eventual decision, which again provides greater certainty and avoids potential costly delays for applicants.

Local Planning Authorities

7.13 Indirect or direct cost to *local planning authorities*:

- Where a further full planning application is sought by the LPA to make a non-material amendment to an existing planning permission, the proposed procedure in comparison will be quicker and cheaper to administer and process. It will be less resource intensive, with less procedural requirements to administer and less information to evaluate in determining such an application. To reflect this streamlined procedure, the proposed flat rate fee is considered more proportionate for determining applications for amendments that are minor and non-material in nature.

7.14 Indirect or direct cost to *local planning authorities*:

- Where an informal approach is taken by the LPA to such amendments (where no fee is charged), the introduction of a more formal procedure may introduce additional procedural requirements to administer, and potentially more information to evaluate in determining the application. This will be offset by the introduction of a statutory flat rate fee for determining non-material amendment applications.

7.15 Direct cost to *local planning authorities*

- Where a LPA receive a non-material amendment application that is exempt from paying a fee, the LPA must determine the application without receiving an income to cover its costs. A fee is not payable when the amendment itself relates solely for the carrying out of operations for the purpose of providing means of access for disabled persons, or where the non-material amendment is required as permitted development rights have been removed.

Similar exemptions currently apply to planning applications, and given that these are rare it is considered that applying the exemptions to non-material applications is likely to have little impact on the income of the LPA.

General Public / Householders

7.16 Indirect or direct costs to the *general public / householders*:

- The proposed procedure will enable householders to make non-material amendments to an existing planning permission that they hold to extend or improve their property without the need to submit an entirely fresh application. This will provide direct cost savings to householders.
- The submission of a new householder application requires the payment of an additional statutory fee - currently £166 for an application relating to one dwelling and £330 for an application relating to two or more dwellings. In comparison, the proposed procedure for making such amendments would only require the payment of a flat rate fee of £25, resulting in possible cost savings of £141 and £305.

7.17 Indirect or direct costs to the *general public / householders*:

- Where non-material amendments to an existing planning permission are dealt in an informal manner by the LPA, it is understood that no fee is charged for the consideration of such changes.
- In this circumstance, the new procedure will require householders to pay a small flat rate fee of £25 to make such amendments to an existing planning permission to extend or improve their property. This is considered necessary to support the LPA in providing a more formal and robust process for making and determining applications for non-material amendments. This in turn will benefit householders by providing greater certainty and clarity about the process and timescales in dealing with such applications.

Benefit Analysis for Option 2 - Introduce a statutory procedure for approving non-material amendments to an existing planning permission.

Businesses

7.18 Indirect or direct benefits to *businesses*:

- The proposed procedure will provide a legal basis for making non-material amendments to existing planning permissions, which will give certainty and clarity to businesses as to the ability to make such amendments.
- It will provide a consistent approach to the process and procedures by which such amendments can be made to existing permissions, which again will provide greater certainty and clarity to this sector.
- A more proportionate and graded approach will be introduced in the circumstances where an entirely new planning application is sought by the LPA to make such amendments. The new process has less procedural and information requirements, a quicker determination period, and avoids the need to revisit the principle of the development. This in turn will reduce unnecessary delay, uncertainty and expense.
- The introduction of a more streamlined application process in comparison to submitting a further full application, will also allow businesses to respond and adapt more efficiently, quickly and cost effectively where the need to make non-material amendments to an existing permission becomes apparent.
- Where non-material amendments are dealt in an informal manner by the LPA, the proposals will introduce a more formal and robust procedure for making and determining such amendments. This will reduce the potential risk of challenge by judicial review to the approach taken by the LPA, or to their eventual decision, which again provides greater certainty and avoids potential costly delays.

7.19 Indirect and direct benefits to *businesses*:

- Where an amendment relates to the provision of facilities to provide access for a disabled person, or it is only required because permitted development rights have been removed, the application will not be subject to a fee. This will mean that, in these special circumstances, business will benefit from the new procedure (the provision of certainty, quick determination and increased flexibility) without incurring a fee.

Local Planning Authorities

7.20 Indirect or direct benefits to *local planning authorities*:

- The proposals will provide a legal basis for making non-material

amendments to existing planning permissions, which will give certainty and clarity to LPAs as to the ability to make such amendments.

- It will introduce a consistent approach and procedure for all LPAs to determine these amendments.
- The proposed procedure will introduce a more proportionate and graded approach to approve non-material amendments in comparison to requiring a full planning application. With less procedural requirements to administer and less information requirements to evaluate, the proposed procedure will reduce unnecessary time and expense for LPAs. This will allow LPAs to reallocate valuable staff resources to other planning applications, which may have more complex and significant impacts.
- Where an informal approach is taken by the LPA, the proposals will introduce a more formal and prescribed procedure, which will reduce the potential risk of challenge to the approach or eventual decision of the LPA.

General Public / Householders

7.21 Indirect or direct benefits to the *general public*:

- Where a further full application is sought by the LPA to make a non-material amendment, the proposed procedure in comparison will introduce a more proportionate approach to consultation. This is considered necessary given that the amendments sought will be minor and non-material in nature, and that the requirements for consultation and publicity will already have applied and been undertaken to the original planning application.
- Where an informal approach is taken by the LPA, the proposed procedure will provide greater transparency to the public on how decisions on applications for non-material amendments are dealt with. It will also enable the public to gain easier access to details relating to such applications and to the LPA decisions on them, given that the new procedure will require these applications to be recorded on the planning register maintained by the LPA.
- As the procedure only allows amendments that are non-material in nature, if an amendment is deemed to have a material impact it cannot be approved through this new procedure. To make the material amendment, alternative procedures (such as a full application or Section 73 of the TCPA 1990, which both require the LPA to undertake notification) will need to be used. This will give certainty to members of the public (such as neighbours) that amendments to existing planning permissions that have a material impact will be processed through more formal procedures that have a greater level of scrutiny and consideration of the issues.

7.22 Direct benefits to the *householder*:

- The proposals will provide certainty and clarity to householders as to the ability to make non-material amendments to an existing planning permission to extend or improve their property.
- Where LPAs require the submission of a new planning application for making non-material amendment, the proposal will provide householders with a more proportionate and quicker approach for making such amendments.
- Where an informal approach is taken by the LPA, a more formal and robust process will be introduced for approving such amendments. This will provide applicants, such as householders, with greater certainty and clarity about the process and timescales in dealing with such applications.

7.23 Indirect and direct benefits to the general public/householder.

- Where an amendment relates to the provision of facilities to provide access for a disabled person, or it is only required because permitted development rights have been removed on a property, the application will not be subject to a fee. This will mean that, in these special circumstances, householders will benefit from the new procedure (the provision of certainty, quick determination and increased flexibility) without incurring a fee.
- The provision of non-material amendments in general, and the exemption from the fee where the amendment is to provide facilities for disabled people, may also have wider benefits to society through increasing opportunities to undertake changes to improve disabled access.

8. Analysis of Other Effects and Impacts

Voluntary Sector

- 8.1 The proposals are likely to have a limited impact on the voluntary sector. Individual housing associations may benefit from the proposals given their role in delivering affordable housing development schemes. They will be able to benefit from making non-material amendments to their approved development proposals without requiring a further full application to make such amendments. The cost and benefits identified above for the business sector may therefore also apply to housing associations.

Equality of Opportunity

- 8.2 The proposed legislation will have a positive impact on equality. Although

the wider proposals, such as the ability to make an application, the submission of a form and information required etc will have an equal impact on all affected sectors. Where a non-material amendment relates to the provision of access for disabled people, the application is exempt from paying a fee. This will help in providing equal opportunities within Wales.

- 8.3 The introduction of a statutory process for approving non-material amendments to existing planning permissions will remove the uncertainty and inconsistency in the ability and approach for making such amendments that currently exists across Wales. This will also ensure that when an amendment has a material impact on stakeholders, such as adjacent neighbours, it will be determined through more formal procedures that have a greater level of scrutiny and consideration of the issues.

Sustainable Development

- 8.4 The proposals will not have any significant adverse impact on sustainable development.
- 8.5 The introduction of a statutory procedure will enable developers and businesses to respond and adapt more efficiently, quickly and cost effectively where the need to make non-material amendments to approved development proposals become apparent.
- 8.6 This will provide greater flexibility for businesses to make such amendments to improve their development proposal, or to take account of changes as the design and development process unfolds. It may also assist in bringing forward the construction of development proposals more quickly.

The Welsh Language

- 8.7 The proposals do not have any adverse implications for the Welsh language.
- 8.8 The proposed statutory procedure for making non-material amendments will require the completion and submission of a standard application form to the LPA. This form will be bilingual, enabling applicants to make such applications through the medium of Welsh.

9. Summary

- 9.1 Based on the analysis undertaken on both options, it is considered on balance that option 2, which establishes a statutory procedure for dealing with non-material amendments to an existing planning permission, should be introduced. This option is preferred in order to:
- Provide a legal basis for making non-material amendments to existing planning permissions, thus providing greater certainty to both LPAs

and applicants as to the ability to make such amendments.

- Provide a more responsive planning system that gives greater flexibility to applicants to take account of changes as the design and development process unfolds. This will allow applicants, such as developers and businesses, to respond and adapt more effectively, quickly and cost effectively where the need to make a non-material amendment to an existing permission becomes apparent.
- Provide greater certainty and transparency about the process and procedure by which non-material amendments can be made to permissions, thus reducing the risk of challenge to the approach taken by the LPA, or to their eventual decision.
- Allow a proportionate and graded approach to approving non-material amendments in cases where an entirely new application is not justified. This will reduce unnecessary delay, uncertainty and expense for applicants, as well as unnecessary time and expense for LPAs.
- Provide a more consistent approach between LPAs in determining these amendments.

10. Consultation

- 10.1 A consultation paper was issued on 10 December 2012 setting out the Welsh Government's proposals for non-material amendments. A 12 week period was provided for the submission of responses to the consultation, closing on 15 March 2013.
- 10.2 The consultation paper, and annexes that included a draft Regulatory Impact Assessment and draft guidance document, were made available on the Welsh Government's website. In addition, stakeholders from the private, public and third sectors were notified in writing.
- 10.3 The consultation exercise generated 35 responses from a wide range of respondent groups, including: local planning authorities, businesses, professional bodies/interest groups, government agencies/public sector, community/town councils and individuals.
- 10.4 Overall, the majority of responses from all respondent groups supported the principle of introducing a statutory procedure to approve minor material amendments.
- 10.5 However some respondents raised issues about aspects of the policy approach to: who can make an application, the notification requirements placed upon the applicant, and the cost of submitting an application in comparison to an application under Section 73 of the Town and Country Planning Act 1990.
- 10.6 These issues have either been addressed within the legislation and accompanying guidance document or in the 'Summary of Consultation' document.

10.7 A full analysis of the responses is provided in the Summary of Responses document that is available on the Welsh Government website.

11. Competition Assessment

11.1 A competition filter test has been applied to the proposed amendments. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.

11.2 The proposals will have equal benefit across the business sector. In particular it will provide a legal basis for making non-material amendments to existing planning permissions, which will give certainty and clarity to businesses as to the ability to make such amendments.

12. Post Implementation Review

12.1 The Welsh Government will monitor the intended effects, use and delivery of the proposed statutory procedure. This is to be achieved through the monitoring of data relating to the determination of applications for such amendments, which will form part of the existing data collection undertaken on a quarterly basis by LPAs on the development management system.

12.2 Regular meetings between Welsh Government's Planning Division and (i) Wales Planning Forum (which includes business and development sector interests), (ii) Chief Planning Officers and (iii) Planning Lead Members will also be a forum for discussing any issues or concerns with the proposed procedure introduced by the new legislation. Feedback from and representations to the Welsh Government's Planning Division by interested sectors, Assembly Members and the public will also provide evidence of the effectiveness of the proposed statutory procedure.

PART 2.B. CORRECTIONS OF ERRORS ON DECISION NOTICES

This section assesses the impact of:

- Article 3 in The Planning Permission (Non-Material Changes and Correction of Errors) (Wales) Order 2014;

13. Options

13.1 The following options are considered:

- **Option 1: Do nothing** – Welsh Government can amend correctable errors in decision documents only after obtaining the consent in writing of the applicant and, if different, the owner of the land.

- **Option 2: Remove the requirement for applicants to agree to the amendment of correctable errors in decision documents** – to apply section 184 of the Planning Act 2008 which amends section 56(3)(c) of the Planning and Compulsory Purchase Act in order to remove the requirement to obtain the consent in writing of the applicant, and landowner if different, before an error in a decision document can be corrected.

14. Cost and Benefits Analysis

- 14.1 The sectors most likely to be affected by the proposals for introducing the correction of errors in appeal decisions include:
- **The Planning Inspectorate** who determine appeals against local planning authority decisions of applications for planning permission;
 - **Businesses** seeking to implement planning permission granted on appeal;
 - **Local Planning authorities** who determine applications for planning permission;
 - **General Public/Householders** that may have an interest in the approved development, or who wish to implement planning permission granted on appeal;
 - **Welsh Government** – who have the power to correct decision notices.
- 14.2 The following cost and benefit analysis has been undertaken for each of the above sectors.

Cost Analysis for Option 1 – Do Nothing

The Planning Inspectorate

- 14.3 Indirect and direct costs to the Planning Inspectorate:
- The current arrangements will continue with the Planning Inspectorate administering requests to amend decision documents which have a correctable error. This involves writing to landowners and applicants, notifying the planning authorities, following up, recording responses and, where agreement is received, amending the decision and re-issuing it. This is estimated to cost the Planning Inspectorate just under £1,115 per year².
 - The Planning Inspectorate may also face some costs related to redetermination of an appeal if the correct steps are not followed when amending a decision document and the decision is then successfully challenged in the High Court. However, as this power is

² This estimate is based on: 18 cases per year; 1.5 hours of Executive Officer time per case at £41.21 per hour (average salary and On Costs).

used on very rare occasions at present, there is no evidence to show that such costs are likely to be incurred.

Businesses

14.4 Indirect and direct costs to businesses:

- Businesses will continue to have the ability to request amendments of correctable errors in decision documents. There will be a small cost related to requesting the amendment. There will also be negligible costs associated with responding to requests to agree to amend a correctable error. These costs are considered to be negligible.

Local Planning Authorities

14.5 Indirect and direct costs to local planning authorities:

- Costs under the current arrangements will be minimal for local planning authorities, consisting of minor administration costs for receiving a notification that an amendment is under consideration, and receiving amended decisions. These costs are considered to be negligible.

General Public/Householders

14.6 Indirect and direct costs to the general public/householders:

- The current circumstances allow the general public/householders to request an amendment. They also require them to respond to correspondence that is either of little consequence or a formality with regard to agreeing to the amendment of a correctable error. The cost of considering such matters is considered to be negligible.

Welsh Government

14.7 Indirect and direct cost to Welsh Government:

- The Welsh Government administers the corrections to decision documents in the same way as the Planning Inspectorate. Requests for corrections are rare, and it is reasonable to use a baseline of 1 request per year. This is estimated to cost Welsh Government just under £40 per year³.

Benefit Analysis for Option 1 – Do Nothing

The Planning Inspectorate

14.8 Indirect and direct benefits to the Planning Inspectorate:

- There are no apparent direct or indirect benefits for the Planning Inspectorate.
- Requests for amendments to decision documents will continue to be subject to the agreement of the applicant, and land owner if different.

³ This estimate is based on: 1 case per year; 1.5 hours of Higher Executive Officer time per case at £24.23 per hour (average salary and On Costs).

This means that the process is lengthy and can result in wasted work. Where an applicant, or land owner, do not respond to the request for their agreement to the amendment, the Planning Inspectorate cannot agree to the request. In the majority of cases where a request for an amendment is refused, the refusal is a result of the applicant, or land owner, simply not responding to correspondence from the Planning Inspectorate. Between 2010 and 2013, nearly 50% of requests for a correction were denied⁴.

Businesses

14.9 Direct benefits for businesses:

- Businesses can request that correctable errors in their decision documents are amended and, where agreement to the amendment is received from the applicant, and land owner, the error is removed. However, the process is lengthened by the need to receive the agreement of the applicant, or land owner. In some cases, this agreement is not forthcoming and the error in the decision document remains. This would not prevent the implementation of the permission granted by the decision document.
- Businesses, where they are the applicant, can also refuse to agree to an amendment if they consider there are good reasons to do so.

Local Planning Authorities

14.10 Indirect and direct benefits to the local planning authorities:

- There are no indirect or direct benefits for local planning authorities in maintaining the current circumstances because their role in the process is simply one of being notified and receiving any amended decision documents.

General Public/Householders

14.11 Direct benefits to the general public/householders:

- The general public/householders can request that correctable errors in a decision document are amended. This will be done following receipt of the agreement to the amendment by the applicant, and land owner. However, the process is lengthened by the need to receive the agreement of the applicant, or land owner. In some cases, this agreement is not forthcoming and the error in the decision document remains. This would not prevent the implementation of the permission granted by the decision document.
- The general public/householders can also refuse permission to amend a correctable error when they consider such action would not be in their best interests.

Welsh Government

14.12 Indirect and direct benefits to Welsh Government:

⁴ 53 requests were received, of which 26 were denied permission to amend a correctable error in a decision document. Information provided by the Planning Inspectorate Wales.

- There are no apparent direct or indirect benefits for Welsh Government.
- Requests for amendments to decision documents will continue to be subject to the agreement of the applicant, and land owner if different. This means that the process is lengthy and can result in wasted work. Where an applicant, or land owner, do not respond to the request for their agreement to the amendment, Welsh Government cannot agree to the request.

Cost Analysis for Option 2 – Remove the requirement for applicants to agree to the amendment of correctable errors in decision documents

The Planning Inspectorate

14.13 Direct costs to the Planning Inspectorate:

- The new process will enable the Planning Inspectorate to amend correctable errors in decision documents without obtaining the agreement of the applicant, and land owner if they are different. This will require notification of the parties that the amendment is being made, and then the subsequent actions associated with amending the decision document. It is assumed that this change will not lead to an increase in the number of requests for amendment. This is estimated to cost the Planning Inspectorate just over £370 per year⁵.

Businesses

14.14 Indirect and direct costs to businesses:

- The proposed changes to the process for obtaining amendments to decision documents will carry the negligible cost of making the request.
- Businesses will not be able to prevent the amendment of a correctable error in a decision notice. However, this does not affect their fundamental Human Rights or prejudice their position since legal recourse to the High Courts would remain.

Local Planning Authorities

14.15 Indirect or direct costs to local planning authorities:

- The costs for local planning authorities will not change under the new process as they will still be notified of the proposed amendment, and will still receive any amended decision documents.

General Public/Householders

14.16 Indirect and direct costs to the general public/householders:

- The proposed changes to the process for obtaining amendments to decision documents will carry the negligible cost of making the request.

⁵ The new procedure will carry an administrative burden. It is estimated that each case will now only require 0.5 hours of an Executive Officer's time.

- The general public/householders will not be able to prevent the amendment of a decision notice, as at present. However, this does not affect their fundamental Human Rights or prejudice their position since legal recourse to the High Courts would remain.

Welsh Government

14.17 Direct costs to Welsh Government:

- The new process will enable Welsh Government to amend correctable errors in decision documents without obtaining the agreement of the applicant, and land owner if they are different. This will require notification of the parties that the amendment is being made, and then the subsequent actions associated with amending the decision document. It is assumed that this change will not lead to an increase in the number of requests for amendment. This is estimated to cost Welsh Government just over £10 per year⁶.

Benefits Analysis for Option 2 – Remove the requirement for applicants to agree to the amendment of correctable errors in decision documents

The Planning Inspectorate

14.18 Direct benefit to the Planning Inspectorate:

- The new process will remove the administrative burden of obtaining the agreement of the applicant, and land owner, to a request to amend a correctable error in a decision document. This will make it quicker to process and issue an amended decision document. It is estimated that this will save the Planning Inspectorate just over £740 per year⁷.

14.19 Indirect benefit to the Planning Inspectorate:

- The potential risk of High Court challenge resulting from not following the appropriate procedure when amending a decision document is reduced. The process is simplified, creating less opportunity for an error which could be challenged in the High Court.

Businesses

14.20 Indirect and direct benefits to businesses:

- Businesses will benefit from the quicker process that will result from removing the requirement to gain agreement from the applicant, and land owner, to a request for an amendment to a decision document.
- They will also benefit from higher rates of accepting requests for change. Under the current process, some requests for an amendment are refused because the applicant, and land owner, does not respond to requests for their agreement to the change. This will

⁶ The new procedure will carry an administrative burden. It is estimated that each case will now only require 0.5 hours of a Higher Executive Officer's time.

⁷ The new procedure is estimated to take 0.5 hours of Executive Officer time, against the 1.5 hours required for the current process.

no longer happen under the new process as the amendments can be made without the obtaining the applicant's, and land owner's, consent⁸.

Local Planning Authorities

14.21 Indirect and direct benefits to local planning authorities:

- There are no indirect or direct benefits for local planning authorities because their role in the process is simply one of being notified and receiving any amended decision documents. The changes to the process do not have any new impact on the planning authorities' role in the process.

General Public/Householders

14.22 Indirect and direct benefits to the general public/householders:

- The general public/householders will benefit from the quicker process that will result from removing the requirement to gain agreement from the applicant, and land owner, to a request for an amendment to a decision document.
- They will also benefit from higher rates of accepting requests for change. As noted above, it is anticipated that the number of requests that are agreed to and carried out will increase.

Welsh Government

14.23 Direct benefit to Welsh Government:

- The new process will remove the administrative burden of obtaining the agreement of the applicant, and land owner, to a request to amend a correctable error in a decision document. This will make it quicker to process and issue an amended decision document. It is estimated that this will save Welsh Government just under £25 per year⁹.

15. Analysis of Other Effects and Impacts

Voluntary Sector

15.1 The proposals are likely to have limited impact on the voluntary sector. They may make requests to amend a correctable error on a decision document, and they may be an applicant who, under the current process, would be required to agree to any requested amendments. The new process will remove the need to agree to any amendments. It is estimated that the costs and benefits for the voluntary sector will be negligible.

Equality of Opportunity

⁸ Evidence from England, where this change was made in April 2009, suggests that the number of agreed changes rose from under 80% on average per year to over 90%.

⁹ The new procedure is estimated to take 0.5 hours of Higher Executive Officer time, against the 1.5 hours required for the current process.

- 15.2 The proposed changes to legislation will not have any adverse equality impact. The proposals will have an equal impact on all affected sectors.

Sustainable Development

- 15.3 The proposed change will not have any significant adverse impact on sustainable development.

The Welsh Language

- 15.4 The proposal does not have any adverse implications for the Welsh language.

16. Summary

- 16.1 Based on the analysis undertaken on both options, it is considered on balance that option 2, which removes the need for an applicant's consent to a request for an amendment, should be introduced. This option is preferred in order to:
- create a quicker process for amending correctable errors;
 - reduce the cost of the amending correctable errors, for the Planning Inspectorate and Welsh Government in particular;
 - increase the number of requests which lead to an amended decision document; and,
 - to remove the need for applicants, and land owners, to consider and respond to matters which are of little consequence to them.

17. Consultation

- 17.1 The proposed change to legislation was consulted upon in the consultation paper entitled "Improving the Planning Appeal Process" dated August 2011. A specific question was asked as to whether consultees agreed with the proposed change. 39 respondents had answered the specific question and 69% of those agreed with the proposals.
- 17.2 Some concerns had been expressed about the proposals. Responses had indicated that errors should be corrected at the outset rather than retrospectively as part of a corrections process. There was also concern that there may be circumstances where the Inspectorate may not necessarily have the information needed to determine what the effects of changing a minor detail could be for a party to the appeal. Concern was also expressed as to the process by which this occurs.
- 17.3 Some clarification was also required of the provision. Respondents had stated that any changes should not change the substance of the decision and should not prejudice any of the parties involved. In support

of the proposals, respondents stated that the proposed mechanism should help developers avoid abortive works.

- 17.4 A comment was also raised expressing general disappointment at the quality of decision-making and that the proposed approach would provide an alleged excuse to further abbreviates decision notices. The recourse to a judicial review is also stated to be too costly and time-consuming.
- 17.5 Other comments have been raised supporting the proposal, though with suggestions for improvement. Those include the specification of a time-period for a decision to be corrected without further permissions and a list (non-definitive) of the types of correcting errors that could occur. It was also stated that any change should be subject to discussion with the parties concerned.
- 17.6 After reviewing the evidence received, we still consider that the most appropriate form of making corrections to decision notices is contained at s.184 of the Planning Act 2008. The majority of respondents agreed with this approach. However, we intend to monitor the effectiveness of this legislative change in dealing with such corrections, and if necessary, consider further changes.

18. Competition Assessment

- 18.1 A competition filter test has been applied to the proposed amendment. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.
- 18.2. The proposal will have equal benefit across the business sector. In particular, it will add pace to the process and increase the likelihood that a request to amend a correctable error will be agreed and carried out.

19. Post Implementation Review

- 19.1 The Welsh Government will monitor the intended effects, use and delivery of the proposed change. This is to be achieved through the monitoring of data relating to the amendment of correctable errors in decision documents. The data will be provided by the Planning Inspectorate and Welsh Government who receive the requests and carry out the amendments.