

REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON 6 APRIL 2010

SUBJECT: NON-MATERIAL VARIATIONS TO PLANNING CONSENTS

BY: PLANNING & DEVELOPMENT MANAGER

1. REASON FOR REPORT

1.1 This report is submitted to Committee in order to agree revisions to the criteria for allowing non-material variations to planning consents.

2. RECOMMENDATION

2.1 It is recommended that the following criteria be met before such a variation to a consent is accepted; -

- Details of any changes must be stated clearly, identified upon 2 sets of scaled plans and *should* be submitted to and agreed upon by The Moray Council prior to the changes taking place (retrospective requests are to be assessed with no less scrutiny against the remaining criteria than pre-emptive requests);
- The change complies with development plan policy;
- The change does not affect any part of a development which has been specifically referred to in objections;
- The change does not require neighbour notification in its own right
- The change does not require any additional planning conditions

2.2 Requests for non-material variations will continue to be dealt with under delegated powers, as is the case at present.

2.3 This change should take effect immediately from the Committee decision date if accepted.

3. BACKGROUND

3.1 The Planning etc (Scotland) Act 2006, The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and Planning Circular 10/2009: Planning Enforcement has brought about changes requiring amendment of the criteria

used to assess changes to consents which are permissible, on account of being minor (non material variations).

- 3.2 The previously agreed criteria for delegated powers to approve non-material variations to planning permissions as per Section 64 of The Town and Country Planning (Scotland) Act 1997 has been in place for some time now. This arrangement has generally worked well and the change now sought has been brought about by the new Act as explained above.
- 3.3 The implementation of these new criteria is now affected by the new requirement whereby developers have to tell the planning authority under section 27B(1) when works are completed. In practice the 'Notice of Completion of Development' process (details of which are attached to Decision Notices) operated by the Development Management Enforcement will likely detect where minor, non-material changes to works have been completed. The current criteria for non-material variations include the need to submit such a request prior to the change being carried out. This prevents otherwise non-material variations being accepted when the Notice of Completion of Development is submitted to the Council. Removing the non-retrospective element of these criteria (as per Recommendation 2.1) would allow the delegated officer the discretion and flexibility to be reasonable when small discrepancies between approved plans and finished development become evident. The altered criteria are sufficient to ensure that control is retained over the non-material variation process and officers retain sufficient discretion where variations are excessive.
- 3.4 The word '*should*' is highlighted in Recommendation 2.1 to encourage the submission of requests before works are carried out, and reduce the need for retrospective applications when a variation request has been turned down for works already carried out. This discretion is essential to give Enforcement and other Officers the flexibility to allow acceptable retrospective changes, thereby not unnecessarily slowing the development management process.
- 3.5 Neighbours in particular will remain protected, as material, notifiable changes will not qualify.
- 3.6 The majority of requests for non material variations will continue to be dealt with by development management officers, as they will have been sought before the Notice of Completion of Development forms are submitted.

4. SUMMARY OF IMPLICATIONS

(a) *Single Outcome Agreement/Service Improvement Plan*

No implications

(b) *Policy and Legal*

No implications, as the change would not impact upon the implementation of the Moray Development Plan. Furthermore in terms of legality, Section 64 of

Town and Country Planning (Scotland) Act 1997 allows Councils the discretion to establish their own procedure for varying planning permissions.

(c) Resources (Financial, Risks, Staffing and Property)

None. The implications for checking Notification of Completions of Development on staff resources, costs etc is a matter separate to the subject of this report.

(d) Consultations

Enforcement Officer

5. CONCLUSION

- 5.1 To enable the new requirement for Notification of Completion of Development to be operated effectively and timeously, the previously agreed process for non-material variations requires amendment.
- 5.2 The changes described above avoid minor alterations requiring submission of planning applications where their impact is non-material.

Author of Report: Neal McPherson, Planning Officer
Background Papers:
Ref: NMP/LH