

# NON-MATERIAL AMENDMENTS TO PLANNING PERMISSION

## Guidance Note for Applicants, Officers, & Third Party Interests

Version 1.3 March 2021 – Development Management

### Introduction

In order to improve certainty of outcomes within the planning process, and better inform customer expectations, Argyll and Bute Council has updated the procedure which it will utilise for the receipt, processing and determination of requests for non-material amendments to an existing planning permission.

From 1<sup>st</sup> April 2021 all requests for non-material amendments made to Argyll and Bute Council shall require to be submitted and assessed using the procedure set out in this guidance.

### Purpose of the Guide

This guidance note is intended to assist planning officers and applicants but will also be useful for other stakeholders involved in the planning process.

This is a non-statutory document which the planning authority has published to provide clarity and assistance to those submitting, assessing, or potentially affected or concerned by proposals. It is not a formal policy document and the planning authority has the discretion to depart from the guide depending on the individual circumstances of a particular case. Where it does so however it will explain why it has done so as part of the assessment of the request.

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### Procedural Overview of Non-Material Amendments

#### *What is the basis of the procedure?*

Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended) (the 1997 Act) provides the mechanism for a planning authority to “vary any planning permission granted by them, if it appears to them that the variation sought is not material”, “at the request of the grantee or a person acting with his consent”.

From 1<sup>st</sup> April 2021, Argyll and Bute Council has decided to introduce non-statutory fees for the processing of requests for non-material amendments to existing planning permissions.

#### *What does Section 64 of the 1997 Act allow you to do?*

Section 64 allows a non-material amendment to be made to an existing planning permission through submission of a written request to the planning authority.

There is no procedural requirement for the planning authority to undertake neighbour notification or consultation with other stakeholders on applications for a non-material amendment, and accordingly this is a streamlined process for developers seeking approval of minor amendments to the detail of a previously approved planning permission.

### **What is a Non-Material Amendment?**

There is no statutory definition of a “non-material amendment”. This is because it depends on a number of factors such as the context of the overall scheme, the amendments being sought to the planning permission, the specific circumstances of the site and surrounding areas, which will vary from one application to another. What may be non-material in one context may be material in another.

The responsibility for determining whether a proposed change is non-material lies with the Council as planning authority. It must be satisfied that the amendments sought to the planning permission are non-material in nature and can therefore be determined as an application under Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).

### **Which Permissions can be subject to a Non-Material Amendment?**

The provisions of Section 64 of the 1997 Act only applies to a grant of planning permission (usually identified by the suffix PP, PPP, or AMSC, or MIN in the application reference number). It does not apply to other consents such as Listed Building Consent, Conservation Area Consent, or Advertisement Applications.

It is also important that the applicant separately checks and confirms any changes with the Building Standards Service to ensure the proposal still complies with the relevant Building Regulations.

## **Submitting a Request for NMA**

### **Who can request a Non-Material Amendment?**

A request for a Non-Material Amendment can only be submitted by the original applicant or someone acting with their express permission.

### **Is there a dedicated application form for use by applicants?**

Yes, from 1<sup>st</sup> April 2021 applicants must use the Council’s dedicated application form for making a request for a non-material amendment. The application form can be downloaded from:

[www.argyll-bute.gov.uk/planning-and-environment/make-planning-application](http://www.argyll-bute.gov.uk/planning-and-environment/make-planning-application)

NMA requests can be submitted by e-mail to:

[Planning.HQ@argyll-bute.gov.uk](mailto:Planning.HQ@argyll-bute.gov.uk)

or alternatively by post to:

Development Management Service  
Kilmory Castle,  
Lochgilphead,  
Argyll,  
PA31 8RT

### **What must accompany a NMA request?**

The request for a non-material amendment must be made in writing (on the form provided) and accompanied by scaled plans and/or drawings with the proposed amendment clearly highlighted.

Applicants are advised to refer to the [National Validation Guidance](#) published by the Heads of Planning Scotland for detailed guidance on minimum standards applicable to the format and content of planning application plans/drawings.

The relevant fee must also be submitted (see below).

### **Is there a fee for making a NMA request?**

Yes, from 1<sup>st</sup> April 2021 Argyll and Bute Council has introduced a fee for processing NMA requests as follows:

- NMA applications relating to householder development (within the curtilage of and/or incidental to the use of an existing dwelling): **£58.00** *accurate 1<sup>st</sup> April 2024*
- NMA applications relating to Local non-householder development: **£116.00** *accurate 1<sup>st</sup> April 2024*
- NMA applications relating to Major development: **£231.00** *accurate 1<sup>st</sup> April 2024*

Please note that we are unable to process applications until we receive the necessary fee payment.

#### ***Fee Exemptions (no fee payable):***

- Where an NMA application is submitted within 12 months from the date of planning permission being issued.

#### ***What payment methods are available?***

Fees for NMA requests can be paid online or by phone.

#### Online:

Please logon to: [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) and select the **'Pay it'** option from the top menu bar.

In the **Planning and Building Standards applications** section...

To pay your NMA Request fee select:

**[Pay your planning application charges \(not advertising fees\)](#)** . In the Reference field, input "NMA" followed by the original planning application reference (e.g. NMA 21/00001/PP)

#### Phone:

Please call 01546 605518 and request to pay "Planning application charges". When asked for a **Planning Application Reference** please state **"NMA" followed by the original planning application reference** (e.g. NMA 21/00001/PP).

When asked for a **Payment Fee Reference** please state **"62510"**

#### ***Can more than one non-material amendment be applied for on the same form and for a single fee payment?***

Yes, provided all proposed amendments relate to the same extant planning permission.

#### ***Can a non-material amendment be made to conditions using this procedure?***

No, the provisions of Section 64 do not allow the planning authority to issue a fresh decision notice. Any proposed amendments must therefore be compatible with the conditional terms of the original planning permission to be considered non-material.

Where applicants are seeking to remove or vary the terms of planning conditions they will require to make a fresh application under Section 42 of the 1997 Act.

The NMA process is not to be utilised for the discharge of details pursuant to conditions on a planning permission.

#### ***Is a NMA decision letter a re-issue of the original planning permission?***

No, a Non-Material Amendment decision letter is self standing document issued under Section 64 of the 1997 Act. It is not a re-issue of the original planning permission which still stands. Both documents therefore require to be read together.

#### ***Can a non-material amendment be made to the boundary of a planning application site?***

No, a non-material amendment must relate only to the land contained within the boundary of the original planning permission. Any proposed addition of new land to the boundary of an approved scheme of development is considered to be a material amendment and will require a fresh application for planning permission.

## How will Requests for NMA be Processed?

### ***What happens once an application has been validated?***

Once a valid request (including fee payment) has been received, the application form and plans accompanying the request will be uploaded to an electronic case file which is available to view online via Public Access.

An acknowledgement letter will be issued to the applicant (or their representative) confirming the date of validation and target time period for determination.

Details of the application, including the applicant's name and site address are made available online to the public. Personal phone numbers, email addresses and signatures will not be displayed to accord with the Data Protection Act 2018. Further detail on how data will be managed is available at:

<https://www.argyll-bute.gov.uk/privacy/planning>

### ***Does the planning authority have to undertake consultation / publicity on NMA applications?***

No, an application under Section 64 is not an application for planning permission and accordingly the Development Management Procedure Order requirements that relate to statutory consultation and publication do not apply. It is therefore at the discretion of the planning authority in whether and how they choose to inform other interested parties or seek their views.

Given that changes sought will be non-material in nature, it is not expected that consultation will be necessary in the majority of cases.

Neighbour notification will not be undertaken by the Council in their administration of a request for a non-material amendment. Where it is identified by officers that a proposed amendment gives rise to a change that they consider has potential to prejudice the interests of neighbours and/or objectors who participated in the original

application process then a further application for planning permission will be required.

### ***What is the time period for determination of an application for a Non-Material Amendment?***

There is no statutory time period within which the planning authority is required to determine a request under Section 64 of the 1997 Act.

The following targets have however been set to assist with prioritisation of officer casework, and to inform customer's expectations of timescales for determination that are likely to apply to the application process.

- NMA relating to Householder Development: 4 weeks from validation date.
- NMA relating Non-Householder Local Development: 6 Weeks from validation date.
- NMA relating to Major Development: 8 weeks from validation date.

## How will Requests for NMA be Determined?

### ***Deciding Whether a Change is Non-Material***

In deciding whether or not a proposed change is non-material, consideration will be given to the effect of the change, together with any previous changes made to the original planning permission. When assessing and determining whether or not a proposed change is non material the following tests are relevant:

- Would the proposed change conflict with National or Development Plan policies and associated guidance? *If yes, then this indicates that planning permission is required.*
- Is the proposed change significant in terms of its scale in relation to the originally approved development scheme? *If yes,*

*this indicates that planning permission is required.*

- Would the proposed change result (or require further detailed consideration of the potential to result) in a detrimental impact either visually or in terms of amenity, to the environment, or with respect to the adequacy of infrastructure or servicing provision? *If yes, then planning permission is required.*
- Would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged? *If yes, then this would indicate that planning permission is required.*
- Does the proposed change seek to reintroduce or alter an element which has previously been removed from the approved scheme either through negotiations to address objections prior to the original scheme being approved, or by planning condition? *If yes, then planning permission is required.*
- Would the proposed change introduce a requirement to assess new/additional planning considerations and/or procedural matters that were outwith the scope of the matters assessed by the original planning application? *If yes, then planning permission is required.*
- Is the proposed change wholly compatible with the terms of the original planning permission, including any conditions imposed upon that consent? *If no, then planning permission is required.*
- Would the proposed change require the imposition of an additional planning condition(s) in order to be considered acceptable? *If yes then planning permission is required.*
- Consideration will also be given to the cumulative nature of a series of non-

material amendment requests. Whilst each change may be minor in itself the combination of a series of changes may lead to a more significant change to the original approved scheme which would require a new application.

Where a request for a non-material amendment fails to meet one of the above criteria then the request will be declined and an application for planning permission will be requested. The new planning application would then be determined in the normal manner, including neighbour notification being carried out.

### **Who determines requests for a Non-Material Amendment?**

The Council's Scheme of Delegation provides officers with the authorisation to determine requests for non-material amendments to planning permissions under Section 64 of the 1997 Act.

In considering any Non-Material Amendment request, officers will prepare a Report of Handling that includes summary details of the proposal, the changes proposed, commentary reflecting on the matters pertinent to the determination of the request (including as relevant planning policy matters and the content of this guidance note), and their recommended decision.

The Report of Handling for all NMAs will require to be reviewed and authorised by the appropriate Team Leader or Service Manager and **not** by the planning case officer undertaking the initial assessment.

### **How will decisions be recorded?**

The Council will record details of all requests for non-material amendments and their decision on the planning register. This will include publication of a decision letter issued to the applicant (or their representative) confirming the outcome of the NMA process, along with a copy of any approved/refused plans.

### **Is there a right of appeal?**



No, there is no statutory right of appeal for either the applicant or third parties. The consideration of a request for a non-material amendment under Section 64 of the 1997 Act is entirely at the discretion of the planning authority.

In refusing a Non-Material Amendment request the planning authority has deemed that the proposed changes will have a material effect and as such will require to be the subject of a further application for planning permission. It is noted that where a Non-Material Amendment request is refused by the planning authority then this does not prejudice the applicant's right to submit a fresh planning application seeking express planning permission for the scheme as amended.

### **Further Information**

For more information, guidance or advice on Non-Material Amendments please contact us using the [Planning Enquiries](#) form, or alternatively telephone 01546 605518.