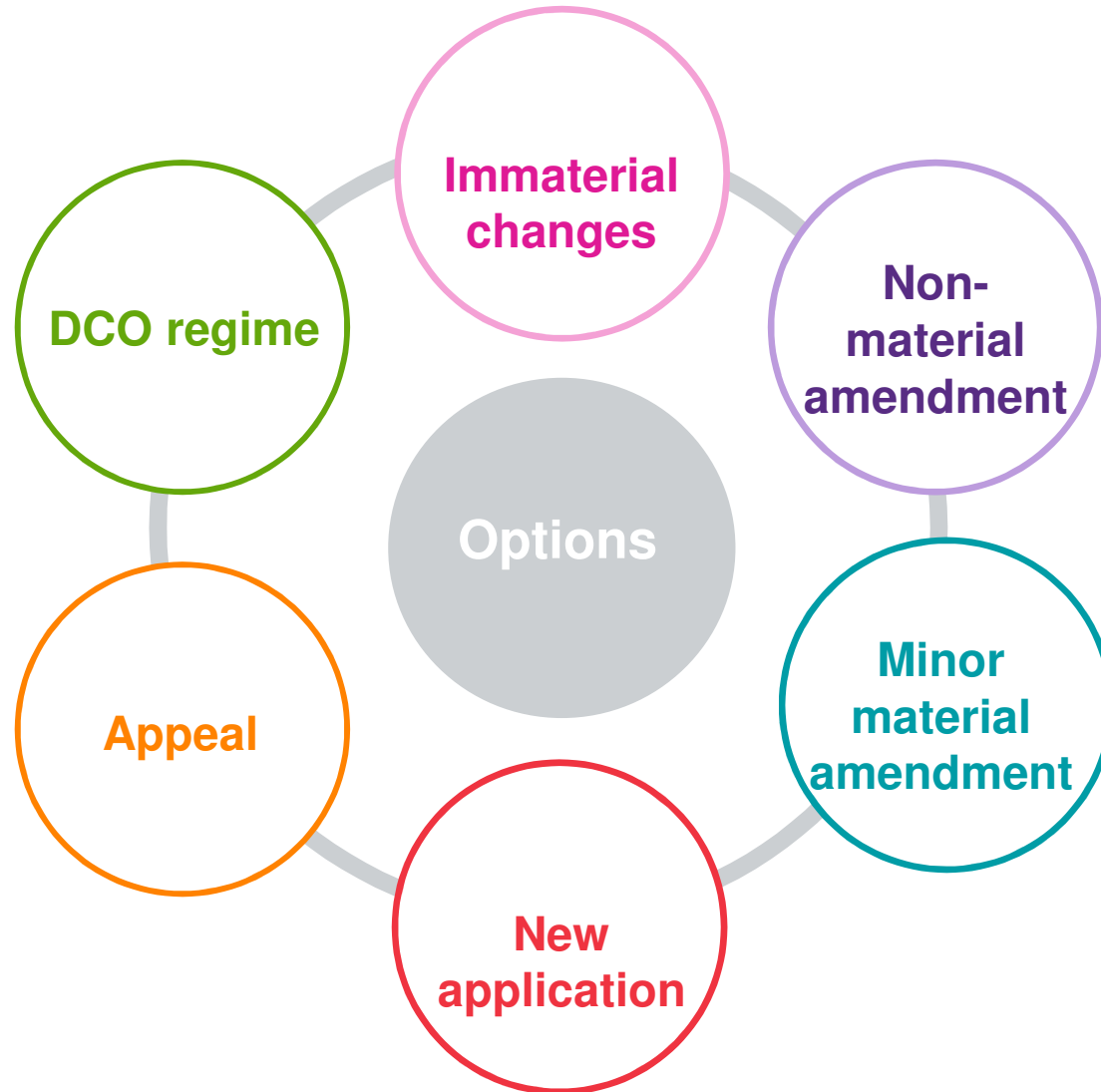

Amending Planning Permissions – Law and Practice

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Introduction



Materiality

- Bernard Wheatcroft Ltc v SoS [1981] 257 E.G. 934
 - *“Whether the development permitted is in substance different from that applied for”*
 - Breckland DC v SoS [1992] 3 P.L.R. 89
 - Where a site is being enlarged *“its legal validity may be harder to justify than a reduction”*
 - Burroughs Day v Bristol City Council [1996] 1 P.L.R. 78
 - A development *“must be judged for its materiality in relation to the building as a whole”*
-

Non-material amendment

- Application under section 96A of the TCPA 1990
 - What is a non-material amendment?
 - Anyone with an interest in the land can apply
 - It does not result in a new permission
 - There is no right of appeal
 - Judicial review only option to challenge decision
 - 2010 appeal against decision of London Borough of Harrow (DCS No. 100-067-9620)
 - Lack of harm may point to change being non-material
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Minor material amendment

- Application under section 73 of the TCPA 1990
 - What is a minor material amendment?
 - Anyone can apply
 - New permission is granted
 - Right of appeal under s.78
 - R v Coventry City Council, ex p. Arrowcroft Group plc [2000] P.L.C.R. 7
 - Test 1: Would the varied conditions be approved in the original application (the Arrowcroft Principle)
 - Test 2: Would there be a fundamental difference in the description of the project
-

Procedural differences

	s.73	s.96A
EIA	New application under the EIA Regulations	Any significant effects?
Publicity	Article 13 of the DMPO	At LPA's discretion
Consultation	Schedule 5 of the DMPO	At LPA's discretion
Time frame	As per new application	28 days or as agreed
S106	Deed of variation	None required
CIL	Chargeable development	No new CIL liability

Other options

- Hybrid approach: R. (on the application of Daniel) v East Devon DC [2013] EWHC 4114 (Admin)
 - Successful s.96A application to add a condition requiring compliance with plans and s.73 variation of condition to amend plans
 - New application (s.70)
 - Determination
 - Implications
 - Appeal (s.78)
 - Grounds
 - Implications
-

Quiz 1 Question

- Planning permission granted for two wind turbines, subject to a condition that the tip height be not more than 100m
- Application made to permit a tip height of up to 125m

What would be the most appropriate application?

- A. Non-material amendment
 - B. Minor material amendment
 - C. New application
-

Quiz 1 Answer

What would be the most appropriate application?

- A.** Non-material amendment
 - B.** Minor material amendment
 - C.** New application
-

Quiz 1 Details

- Finney v Welsh Ministers [2018] EWHC 3073 (Admin)
 - The decision slightly alters the test from Arrowcroft:
 - Test 1: the Arrowcroft Principle
 - Test 2: Is there a fundamental alteration of the original proposal?
 - The decision is being appealed
-

Quiz 2 Question

- Outline planning permission granted for 700 homes and associated open space and community facilities
- Reserved matters approved, subject to approval of bat mitigation strategy and method statement
- Application made to alter plans and bat mitigation strategy

What would be the most appropriate application?

- A. Non-material amendment
 - B. Minor material amendment
 - C. New application
-

Quiz 2 Answer

What would be the most appropriate application?

- A. Non-material amendment**
 - B. Minor material amendment**
 - C. New application**
-

Quiz 2 Details

- R (on the application of Fulford Parish Council) v York City Council [2019] EWCA Civ 1359
 - S.96A can vary a planning permission consisting of the grant of permission plus any conditions which it is subject to
 - Public participation in environmental decision making was important, but s.96A deals with situations where the decision has been taken
 - Consider analogous system of permissions in principle and approval of technical details with non-material change being made to them
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Quiz 3 Question

- Planning permission to demolish existing house and erect two new houses
- S.73 refused: new velux, gable, dormer and sky lights
- During construction, changes made: hip removed from rear elevations, sky lights added and patio doors enlarged

What would be the most appropriate application?

- A. Non-material amendment
 - B. Minor material amendment
 - C. New application
-

Quiz 3 Answer

What would be the most appropriate application?

- A. Non-material amendment**
 - B. Minor material amendment
 - C. New application
-

Quiz 3 Details

- Advice to local authority following threat of challenge
 - The variation of the rear elevation plan was not material:
 - It was required due to unforeseen characteristics of the development during construction
 - It reduced the overall size of the new house
 - The skylights did not result in a material change to the external appearance of the development
 - Differentiate from previous s.73 application
 - Officer's judgment
 - Enlarging the patio doors was a minor change and caused no harm
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Making changes to DCOs

- Correction Order
 - Non-material change order
 - Analogous to s96A application
 - Hinkley Point C
 - Material change order
 - New application
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Conclusion

- The method to amend planning permission will depend on the nature of the proposed change
 - LPAs have wide discretion in deciding whether a change is material
 - In the absence of a statutory definition, some LPAs have guidance as to what is a material change
 - A new application will be required for significant and fundamental changes
 - Horizon gazing: streamlining the options?
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Any questions?



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