

Bills Committee on Town Planning (Amendment) Bill 2003

**Submission of Further Information Relating to Applications for
Amendments of Plans and Planning Permissions**

Purpose

At the Bills Committee meetings held on 28 November 2003 and 3 December 2003, Members discussed the proposed provisions concerning the applicant's submission of further information relating to the application for amendment of plan and planning permission. The Administration was requested -

- (a) to advise whether similar overseas legislation adopts the same criteria of "material change" in considering acceptance or otherwise of further information relating to applications for amendments of plans and planning permissions;
- (b) to provide case law, if any, on the interpretation of "material change";
- (c) to provide a breakdown by nature of further information submitted by the applicants to the Town Planning Board (TPB) to supplement applications for amendment of plans or planning permissions under the present mechanism; and
- (d) to consider the need for proposing amendments to the Bill to provide discretion to the TPB to decide whether the statutory time for processing applications for amendment of plans or planning permission should be extended because of the submission of further information by the applicants.

This paper presents the policy intentions behind the proposals in the Bill, the requested information and our proposed amendment in view of the deputations' concerns.

Proposals in the Bill

2. Under section 16(2I) of the Bill, it is provided that the TPB may accept “further information” submitted by an applicant for planning permission and amendment of plan, provided that -

- (a) such information is submitted before the application is considered by the TPB; and
- (b) the inclusion of the information would not, in the opinion of the TPB, result in a “material change of the nature” of the relevant application.

3. In other words, if the TPB is of the view that the further information provided by the applicant will result in a material change in the nature of the application, it would be regarded as a new application and will be subject to the requirements of seeking owners’ consent or notifying the owners and publication for public comments.

4. In line with the objective of increasing transparency, even if the TPB accepts the submission of “further information” as part of the original application on grounds that it will not result in a material change in the nature of application, under the proposals in the Bill, such further information shall invariably have to be made available for public inspection and comments. Accordingly, the statutory time limit for considering the application would be extended as if it were submitted on the day when the further information is received. This is to ensure that the public are provided with the opportunity to comment on the further information, and that the Administration is given sufficient time to consider the further information. As a consequence, any further information submitted by an applicant, once accepted by the TPB, will amount to “re-starting the clock” in the processing of the application.

Concerns expressed by deputations

5. In the course of examination of the proposal, some deputations (REDA, Association of Planning Consultants and Law Society of HK) and a Bills Committee Member considered that the provision as outlined in paragraph 4 above was over restrictive and might delay the planning approval process. To facilitate further consideration by Members on this matter, the Administration has undertaken to provide an analysis of the types of further information processed, and to draw reference from overseas where appropriate.

Nature of further information submitted to the TPB

6. We have analyzed five applications for amendments of plans considered from September to November 2003, and 21 applications for planning permission considered at a meeting in October 2003. Among these 26 applications, only six applications (23%) for planning permission did not involve submission of further information after the application was made. The remaining applications (77%) involved one or more submissions of further information. The majority of the further information was submitted one month after the application had been made. A breakdown of the nature of the further information is provided below -

- (a) clarification of particulars of the applications (e.g. applicant's identity, site area, lot number, gross floor area, number of storeys, building height, access arrangement, car-parking provision, provision of recreational facilities) (33%);
- (b) provision of further justifications (e.g. new or revised technical assessment report) (32%);
- (c) revision of the development scheme (e.g. revised master layout plan, floor plan) (22%);
- (d) rectification of editorial errors (e.g. typos) (5%); and
- (e) miscellaneous (e.g. provision of Chinese translation of executive summary report) (8%).

7. The above statistics show that the submission of further information by applicants is not uncommon.

Reference from overseas

8. On Members' request, we have conducted a research of the town planning legislations and case laws in the United States of America (USA), the United Kingdom (UK) and New South Wales of Australia.

USA's practice

9. It is found that most of the legislations do not have any express provision for submission of “further information” relating to planning applications although some have provisions regarding amendment of application. For example, the Zoning Ordinance of San Jose in California, USA provides that an applicant for planning permission may make amendment to his/her application prior to the opening of any required public hearing on his/her application, except where the amendment involves -

- (a) a change in the application site boundaries that would affect the number of persons required for notification of the public hearing (i.e. the owners and occupants of properties within 300 feet of the application site); or
- (b) a change which is determined by the Director of Planning as not to be covered by the environmental clearance previously issued for the application¹.

The Ordinance, however, does not provide for a statutory time limit for considering a planning application. It is therefore not known whether the authority concerned is obliged to consider the application within a certain time frame.

UK's practice

10. In the UK, the Town and Country Planning Act and its subsidiary legislation do not have any express provision concerning amendments to a planning application or submission of further information. Nevertheless, the High Court in British Telecommunications Plc v Gloucester City Council [2001] EWHC Admin 1001 held that the local authority should adopt a “pragmatic approach” when considering amendments to a planning application made by an applicant before the application is considered by the authority. The question should be whether the change is so substantial that the application can only be considered fairly and appropriately by requiring a fresh application to be lodged. There is no statutory obligation on local planning authorities to publicize changes to applications once they are accepted. It is therefore at the discretion of the local planning authority to decide whether further publicity is desirable.

¹ In accordance with the San Jose Municipal Code, all planning applications require environmental clearance or exemption by the Director of Planning.

Australia's practice

11. The Environmental Planning and Assessment Regulation 2000 in New South Wales of Australia has a provision relating to amendment of planning application. The provision stipulates that any amendment made by the applicant should have agreement of the authority. However, the provision does not mention whether the acceptance of the amendment would result in deferment of the statutory time limit for considering the application².

A more pragmatic approach with regard to submission of further information

12. We are not entirely unsympathetic to the view expressed by some deputations that unnecessary delays would occur if any further information submitted and accepted by the TPB before its consideration of the application which are trivial in nature would have the effect of re-starting the planning application system. This may go against one of the objectives of the Bill which is to streamline the process. Moreover, it may discourage applicants from rectifying editorial or transcription errors in the application submitted.

13. We are therefore prepared to consider a more pragmatic approach of exempting some of the further information submitted to the TPB which does not have a significant impact on the substance of the planning applications from the requirement for publication (and hence will not have the effect of “re-starting the clock”), such as those relating to rectification of minor errors or miscellaneous information referred to in paragraph 6(d) and (e) above.

14. In practice, it would be almost impossible to set out in the law each and every of the circumstances where such further information would be regarded as minor and insignificant in nature. If Members consider there is merit in a more pragmatic approach, we propose to amend the Bill to give the TPB the discretion to decide whether or not further information of a minor nature submitted and accepted by the TPB should be exempted from the publication requirement and to allow the TPB to delegate such decision to public officers. This is in line with the UK's practice for the local planning authority to decide whether further publicity is desirable. Where the further information submitted and accepted does not justify such exemption, it will be published for public comments.

² The statutory time limit for consideration of a planning application is 40 days (or 60 days for designated development requiring publication) from acceptance of the application by the authority.

15. To support the exercise of such discretion and to enable all to know what further information would require publication, the TPB would draw up a set of criteria and have this promulgated in the form of TPB Guidelines to be available when the legislative amendments take effect. Subject to Members' agreement to the revised proposal, we shall proceed to prepare a Committee Stage Amendment to the Bill.

Housing, Planning and Lands Bureau
Planning Department
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