



PLANNING BULLETIN

THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) (ENGLAND) REGULATIONS 2008

On 30 July 2008 the Government published a new Statutory Instrument 2008 (No. 2093) amending the Environmental Impact Assessment Regulations in relation to planning applications in England.

These amendments have been introduced to address issues raised by two Judgements (Crystal Place/White City) of the European Court of Justice (ECJ) in 2006. The ECJ ruled that the UK had failed to transpose correctly the EIA Directive because its implementing regulations allowed only for EIA before the grant of outline permission and precluded such action at the later stage when reserved matters are approved.

The amendments to the regulation now allow the determining authority to require an Environmental Statement to be prepared prior to determining reserved matters in a multi-stage application. An Environmental Statement can also be required prior to discharging conditions.

The amendments include reference to “subsequent applications” which are defined as an application for approval of a matter where the approval:

is required by or under a condition to which a planning permission is subject, and

must be obtained before all or part of the development permitted by the planning permission may be begun.

“*Subsequent consent*” means consent granted pursuant to a subsequent application.

“Subsequent applications” which are *EIA applications* but where EIA was not required at the outline or previous stage cannot now be determined unless accompanied by an environmental statement and local authorities are required to notify applicants in writing that an environmental statement is required.

Commentary

For Schedule 2 applications which were not considered to be EIA development at the outline stage we would strongly recommend applicants to submit an application for a screening opinion prior to or on the submission of the reserved matters application to enable the local authority to consider whether the proposals fall to be determined as an EIA application. Without this determination at an early stage the application may be severely delayed if the local authority decide that an Environmental Statement is required. If no screening is given the application could be subject to Judicial Review challenge.

In addition although not specifically referred to in the EIA Amendments Regulations we would recommend applicants to obtain a screening opinion on whether a further EIA statement is required in cases where an environmental assessment was carried out at an outline stage but circumstances affecting the environment might have changed or where the detailed scheme is significantly different from the scheme used in assessing the environmental impact at the outline stage.

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