

PLANNING BULLETIN

Environmental Impact Assessment

A Guide To Good Practice And Proceedings – A Consultation Paper

In June 2006 the Department of Communities and Local Government (DCLG) published a consultation paper setting out a guidance to good practice and procedures for Environmental Impact Assessment (EIA). The guide updates and consolidates previously published guidance including “Environmental Impact Assessment: A Guide to Procedures” (ODPM 2000).

Effect of Case Law on EIA Practice

Case law has strongly influenced EIA practice with court judgements in the UK and in the European Court of Justice serving to achieve greater clarification on many aspects of the EIA Regulations. Key cases are included in the text, along with other information and examples.

Effect of SEA on Site Selection

The guide refers to the role of Strategic Environmental Assessment (SEA) in terms of site selection and states that where a development is being processed in accordance with a local plan allocation, the level of detail of site selection warranted by the EIA Regulations may well depend on the extent to which this has been addressed in any SEA.

The guide goes on to state that “for projects where site selection is not informed by a development plan evidence of systematic consideration of site options, using objective criteria is likely to be a pre-requisite to EIA. It is generally crucial for schemes which undergo public inquiry.

Published guidance on appraisal tools to assist site selection mostly relates to major transport projects.

The Transport Analysis Guidance Website (WebTAG) can be accessed at www.webtag.org.uk

Field Surveys – Need to allow time

Reference is made to the need for field surveys to identify baseline conditions for the EIA. Although the full scope of these surveys is identified at the scoping stage some surveys (in particular ecology) are seasonal dependent and may be required over a large duration possibly up to 12 months. To avoid delay to the application it is prudent to begin survey work at an early stage.

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This information needs to be available at the time of the decision making and reference is made in the guide to the R v Cornwall CC ex parte Jill Hardy (2001 JPL 786) case where it was known that bats existed on the site but the applicant did not investigate these for their presence as part of the ES. The planning authority imposed a condition requiring a survey prior to commencing development but the Court held that this information should have been part of the ES and the planning permission was quashed.

Increasing Public Involvement

The guide refers to the increasing emphasis on consultation and public involvement in planning applications since the EIA Regulations first came into force.

The EIA Regulations define a set of statutory consultees but roles are identified for the 'public concerned' including non-governmental organisations promoting environmental protection and the wider public. The guide states that consultation should be as wide as possible and opportunities to engage with the public should be taken whenever possible/practical (paragraph 38).

The guide recommends extensive consultation at the project preparation stage for projects which have significant emissions, are located in sensitive environments and/or are of large scale (paragraph 39).

Outline Applications/Reserved Matters

In terms of scoping EIA Regulations require consultation with statutory consultees. However, the guide recommends that this should be broadened to include local groups ("the public concerned") (paragraph 102).

The section dealing with outline applications will be subject to revision to take account of the judgements of the ECJ dated 4th May 2006 in cases C-290/3 (Queen oao Diane Barker v LB Bromley) and C-508/03 (EC v UK).

It is, however, stated in paragraph 42 that the extent of information frequently provided in an "outline" application is unlikely to meet the requirements of statutory EIA due to uncertainties in project definition and impacts. Reference is made to the case of R v Rochdale MBC ex parte Tew (3PLR 74).

It is also noted that reserved matters must not include aspects that go beyond the project approved at outline stage (paragraph 44).

Although not referred to in the Guide the requirement for a Design and Access Statement to accompany outline and detailed planning applications should address this issue. The requirement for a Design and Access Statement to be submitted with applications comes into force on 10th August 2006.

Beware of Screening Opinions Under Delegated Powers

With regard to screening, reference is made to the need to follow correct administrative procedures. In the case of R v St Edmundsbury Council, ex parte Walton 1999 a decision to grant planning permission was quashed because a decision not to require EIA was taken by an officer with no formal delegated authority (paragraph 51).

Content of Applications for Screening Opinions

In requesting a screening opinion the information provided must include:

- a plan identifying the site of the proposed development
- a brief description of its nature and purpose
- an objective description of its possible effects on the environment (para 53)

Developers are encouraged to provide as much information as possible about the likely environmental effects including results from preparatory studies carried out. It is recognised, however, that full knowledge of every significant environmental effect cannot be expected at this stage and a valid screening opinion can be made without the full assessment process being carried out (paragraph 5.4).

Screening opinions can be obtained prior to an application being made and pre-application discussion with the LPA with regard to this is considered to be good practice (paragraph 55).

For pre-application screening requests to be effective and useful developers should ensure that the development described in the application is not significantly different from that for which the screening opinion has been issued otherwise a new screening opinion will be needed (paragraph 57).

Wider Interpretation of Schedule 2

The guide states that in determining whether development is of the type of development in Schedule 2 should be interpreted widely.

The fact that a particular type of development is not specified within the categories of projects listed does not imply that the EIA Regulations are not applicable e.g. urban development projects “include housing developments not specifically included in the EIA Regulations”.

Reliance on Conditions to avoid EIA Unlawful

The guide refers to the need for decisions to be based on the likely effects of development. The fact that a planning condition could be applied that is capable of reducing the likely environmental effects below a significant level, should not lead to a conclusion that EIA is not required (paragraph 721 (Regina oao Rebus v South Cambridgeshire DC) (2003 2PLR5).

Screening Check Lists – replace Circular 09/77 – Annex A

The guide refers to the use of screening check lists as an aid to determining whether a proposed development is likely to have significant effects. This reference to check lists is a new recommendation. This partly replaces Annex A (check) the Circular 02/99 which provided a set of indicative thresholds and criteria for different type of development (paragraph 74).

Benefit of giving reasons for Screening Decisions

So that they have an “audit trail” local authorities are encouraged to retain a written record of the matters considered at screening stage. Although there is no statutory requirement to provide reasons where EIA is deemed unnecessary competent authorities should consider whether there is a practical benefit in choosing not to disclose reasons (paragraph 79).

Possible Need for Revised Screening Opinions

A revised screening opinion may be necessary where applications differ markedly from those screened at EIA application stage (paragraph 84).

Content of Scoping Reports – Example of good practices

A format is not fixed but an example of a scoping report contents is provided (paragraph 98).

New Methods of Presentation

In terms of presenting ES and making them readily available to the public it is suggested that consideration be given to publishing the ES on the internet or in CD Rom format and making ES available at post offices, libraries, community halls, schools etc.

Opportunity to Comment

Comments on this consultation paper should be sent to the DCLG by 22nd September 2006.

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