

Environmental Impact Assessment

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Legislation / guidance

- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 2014/52/EU) (the Commission has produced an informal consolidated version: http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf)
- PPG section on EIA: <https://www.gov.uk/guidance/environmental-impact-assessment>

EIA – the process

1. Decide if the application is for “EIA development” (if don’t know, may request a screening opinion – reg.6 – from LPA);
2. If it is, applicant may seek a scoping opinion – reg.15 – from LPA on scope of information to be provided in Environmental Statement (“ES”).
3. Prepare ES.
4. LPA carries out public consultation.
5. LPA examines the ES and any other relevant information from consultation.
6. LPA comes to reasoned conclusion on the significant effects.
7. LPA integrates that conclusion into their decision whether to grant consent for the development.
8. LPA publishes statement of reasons for decision on EIA development.

1. Is the application for EIA development?

- listed in Sch. 1; **or**
- listed in column 1 of Sch. 2 and either:
 - Any part of the development is to be carried out in a “sensitive area”; or
 - Any applicable threshold or criterion in the corresponding part of column 2 is respectively exceeded or met

AND likely to have significant effects on the environment by virtue of factors such as its nature, size or location, taking into account Sch. 3 criteria (and indicative thresholds and criteria in PPG EIA section Annex)

Sensitive areas: SSSI, National Park, Broads, World Heritage site, Scheduled Ancient Monument, AONB, protected site under Habitats law

1. Is the application for EIA development?

- “Likely” (as in “likely to have significant effects”) means “something more than a bare possibility ... though any serious possibility would suffice”: *R. (Bateman) v South Cambridgeshire DC* [2011] EWCA Civ 157 at [17]
- Unlike in the habitats context (see *People Over Wind*), mitigation measures can be taken into account at the screening stage: see *R (Cairns) v Hertfordshire CC* [2019] Env. L.R. 6 at [28]-[29].
- The court should not impose too high a burden on LPAs at the screening stage – not a detailed assessment, which comes later: *Bateman* at [20].
- *Wednesbury* approach applies to challenging screening decisions: *R. (Loader) v SSCLG* [2012] EWCA Civ 869 at [31].

1. Is the application EIA development?

- Considering “likely significant effects” must cover “the cumulation of the impact with the impact of other existing and/or approved development”: Sch.3, para. 3(g) - *Preston New Road v SSCLG* [2018] Env. L.R. 18 at [67].
- Conjecture about future development on other sites is not within this remit, and a claim that screening was deficient must provide objective evidence that relevant significant effects have been overlooked: *R. (Hockley) v Essex County Council* [2014] Env. L.R. 24 at [102].
- What is in substance a single project cannot be “salami-sliced” into a series of smaller projects, each of which falls below the relevant threshold criteria: see *R. (Larkfleet Ltd) v South Kesteven DC* [2016] Env. L.R. 4 at [35].

1. Is the application for EIA development?

- EIA development must involve alterations to the physical aspect of the site: *Brussels Hoofdstedelijk Gewest v Vlaams Gewest (C-275/09)* [2011] Env. L.R. 26. In this respect, “EIA development” is more restrictive than development subject to Habitats law: *Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu (C- 293/17)* at [59]-[63].
- An EIA application can be a “subsequent application” (i.e. RM approval or discharge of condition). For “multi-stage consents”, the likely significant effects should where possible be identified and assessed at the time of the principal decision. If not possible, the assessment should be undertaken at the subsequent stage. “Subsequent applications” are governed by regs. 9 & 10. See PPG EIA, para. 56

1. Is the application for EIA development?

- Commission Guidance on screening:
http://ec.europa.eu/environment/eia/pdf/EIA_guidance_Screening_final.pdf
- Commission Guidance on interpretation of definitions in certain project categories: http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf

1. Is the application for EIA development?

- PPG on EIA, para. 18:

"Only a very small proportion of Schedule 2 development will require an Environmental Impact Assessment."

Para. 2:

"Environmental Impact Assessment should not be a barrier to growth"

Helpful PPG screening flowchart:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630686/eia-flow1.pdf

2. Scoping and 3. ES preparation

- Commission Guidance on scoping and ES preparation
<http://ec.europa.eu/environment/eia/eia-support.htm>
- Must include at least the information at reg.18(3), and must also comply with the requirements at reg.18(4)-(5).
- The requirement at reg. 18(3)(d) to include “a description of the reasonable alternatives” and “the main reasons for selecting the chosen option” is new. See: *Holohan v An Bord Pleanala (C-461/17)* [2019] Env. L.R. 16 at [60]-[69].
- ES must be prepared by “competent experts” – new to the 2017 Regulations. See Commission Guidance on ES preparation at section 2.2.

4. – 7. LPA/SoS consideration

- LPA/SoS can't grant PP or subsequent consent for EIA development unless an EIA has been carried out: reg. 3.
- The EIA process is defined in reg. 4 (co-ordinating with Habitats at 4(2)(b)).
- LPA must (where appropriate) co-ordinate EIA and Habitats assessment: reg. 27.
- Provision of “further information” governed by reg. 25.

4. – 7. LPA/SoS consideration

- LPA/SoS must (reg. 26(1)):
 - (a) examine the environmental information;
 - (b) reach a reasoned conclusion on the significant effects;
 - (c) integrate that conclusion into the planning decision;
 - (d) if granting, consider whether to impose monitoring measures (new).

- Reasoned conclusion must be “up to date”, i.e. “it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the proposed development”.

- Monitoring measures: see reg. 26(3).

8. LPA/SoS reasons

- Where an EIA application is determined (whether granted or refused), the LPA/SoS must “promptly ... make available for public inspection ... a statement containing ... the main reasons and considerations on which the decision is based ... and ... a summary [of how consultation responses] have been incorporated or otherwise addressed”: reg. 30.
- The standard of reasons in the EIA context is the “*Porter*” standard (*South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, at [36]): see *Dover DC v Campaign to Protect Rural England* [2018] 1 W.L.R. 108 at [39].
- Breach of EIA duty: more likely to lead to quash of permission following *Dover* at [48]. But declaration/mandatory order to produce statement may still be appropriate where committee simply followed officers’ recommendation.

Thank you for listening

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