

Practice Guidance Note 6 Environmental Impact Assessment - Screening & Scoping Opinions

The POS Development Management Practice Project works with a group of local authorities to address issues in development management where there is a lack of published guidance. The group examines the range of approaches across the authorities to identify good practice, and this is drawn together as a practice guidance note. This Note does not constitute a legal opinion and authorities are advised to also consult with their own legal advisors.

Introduction

1. The Environmental Impact Assessment Regulations are perhaps one of the least read and studied pieces of legislation in the planning system and failure on the part of a local planning authority to comply with the procedural requirements of the Regulations can result in an EIA related decision being overturned by the courts.
2. The reason for this is partly because to many planners' Environmental Impact Assessment only relates to large developments and therefore there is only a very infrequent need to be aware of the requirements of the Regulations. This procedure notes does not take away from the need to be familiar with the Regulations but its role is two-fold: to make users aware of when the requirements of the Regulations might apply to Screening & Scoping Opinions and to identify some key procedural issues that must be addressed.

The basics

3. Because of the limited timescales involved, the production of screening and scoping opinions (3 weeks and 5 weeks respectively) should be delegated to officers. However, it is important to ensure that there is proper authorisation to the necessary officers and that it references the correct legislation, as there have been recent examples of delegation schemes which still referred to the old, 1988 regulations and not the newer 1999 Regulations, as amended.
4. Any application for which a Screening Opinion concludes that an Environmental Statement should be submitted has a determination period of 16 weeks. The time period does not commence until an Environmental Statement has been submitted.
5. A Screening Opinion is required for categories of development above a certain size, or if they are within a sensitive area such as an AONB or SSSI. The Screening Opinion is the local planning authority's assessment of whether an Environmental Statement should be submitted with the application. If an application falls within the categories of development set out in Schedule 2 of the Regulations and either (a) meets or exceeds the size thresholds or (b) is within a sensitive area, a Screening Opinion is a mandatory requirement.
6. A Scoping Opinion is the authority's formal view on what issues an Environmental Statement should contain. The scoping process should aim to identify only the issues which will be significant and it is perfectly acceptable if it concludes that there are only or two issues that a Statement needs to cover. There is no mandatory requirement for an applicant/developer to seek a Scoping Opinion.
7. A Screening or Scoping Direction can be sought from the Secretary of State. The Secretary of State can also direct that in certain instances development below the threshold would nevertheless have an impact which would necessitate an Environmental Statement. A Direction can be issued at any time up to the point where the application is determined.

8. A Screening or Scoping Opinion is valid for 2 years.

Screening Opinions

9. It is important that authorities have clear procedures in place in order to be able to identify when an application that has been submitted to an authority requires a Screening Opinion. Because of the 21 day time period within which to adopt an Opinion (this period can be extended if agreed in writing with the applicant) it is also important that the need for a Screening opinion is flagged up as early as possible.
10. In authorities where validation is carried out expeditiously and valid applications are passed to case officers within a day of being lodged with the authority, it can be appropriate for the case officers to deal with the question of whether an Environmental Statement is needed. However, in most authorities it will usually be best practice if a properly trained validation team initially considers the need for an EIA as part of carrying their initial validation checks. If they are in any doubt they should make a note of this on the file or clarify the matter with a planning officer. It is best practice to identify whether a proposal is EIA development as soon as possible after receipt of an application and within 3 days at the latest.
11. Although the range of developments to which the Screening Opinion requirements will apply is quite small compared to the overall number of applications received by an authority, it is good practice if as part of the internal validation checksheet, the question of whether a Screening Opinion is required has been asked of all applications. It provides a clear audit trail that the authority is correctly interpreting the Regulations.
12. In the rare instance of an application being received with an Environmental Statement, which the validation or planning officer considers to be unnecessary, then the proposal must be treated as EIA development and the requirements of the Regulations followed in the processing and determination of the application.
13. Responsibility for conducting a Screening Opinion must rest with a planning officer. The Screening Opinion must address the issues set out in Schedule 3 of the Regulations. Screening Opinions do not need to be lengthy but they must cover all the relevant issues and as long as the authority is satisfied that it has a reasonable level of information a conclusion can be reached. Information in circular 2/99 can be of assistance but the indicative thresholds must not be taken as automatic triggers for requesting an Environmental Statement. It is best practice if authorities use a checklist in order to assist the process of reaching a screening opinion.
14. The formal opinion of the authority must be reached within 21 days (unless the period has been extended in writing) and sent to the applicant. There is no mandatory requirement to carry out consultations although many authorities have established protocols with key internal and external consultees which ensure that a response is received in time for the planning officer to take account of any views. This is good practice.
15. If an Environmental Statement is required, the reasons for this must be given. There is no requirement to give reasons where no Environmental Statement is required but it is usually good practice and customer care to explain the reasons for the authority's decision. The officer's report or checklist can usefully be included with the formal opinion.
16. The Screening Opinion must be placed with the Planning Register.
17. The applicant must be given 21 days to write to the authority to confirm that an Environmental Statement will be prepared. If no response is received within that time

then the application is 'deemed refused' and no further action need be taken by the authority. If confirmation is received that an Environmental Statement will be submitted, the application is suspended until the Statement is received. The applicant should be made aware of these facts when informed of the authority's Screening Opinion.

18. For major applications, the need for an Environmental Statement will normally expected to be identified at the pre-application stage. However, any developer or applicant can seek a Screening Opinion from the authority on any potential proposal prior to submitting an application.
19. The timescales and requirements are the same for all Screening Opinions, whether they are conducted pre or post application, including the placing of the Screening Opinion with the Planning Register.
20. It is important that there is a central record of the Screening Opinion and the decision so that if an Environmental Statement is required this will be picked up at the validation stage should an application be submitted. Most IT systems are now able to record the fact that a Screening Opinion has been issued, so that the information is available. A copy of the Screening Opinion should be placed with the application once it is received.

Reserved Matters and Information Pursuant to a Condition

21. Recent case law has confirmed that the EIA Regulations can apply to reserved matters applications. Despite the fact that they are not a planning application they are nevertheless part of a 'two-stage development consent' and as such are deemed to fall within the remit of the Regulations. All officers involved with validation/EIA development need to be aware of this fact.
22. Similarly, the courts have accepted that in rare cases, the same 'two-stage development consent' issue can be applicable to information submitted pursuant to a condition.
23. Although in these cases the need for an Environmental Statement is only likely to arise if new information becomes known or there has been a change in circumstance, if the proposal would normally be subject to a Screening Opinion then the authority must carry one out in order to determine whether a Statement is required.

Scoping Opinions

24. Many applicants and authorities now prefer the Scoping stage to be part of the wider pre-application discussions and therefore do not formally seek/prepare a Scoping Opinion. Instead, the scope of the Environmental Statement is agreed over a longer period, often with the applicants submitting a Scoping Report for the authority to consider. Because Scoping Opinions are not mandatory, this is perfectly acceptable and can produce more considered results as there is not the pressure to agree the content of the Statement within 5 weeks.
25. Where a developer proposes a Scoping meeting with a range of interested parties, it is acceptable for the local planning authority to attend and take part. However, care must be taken where the developer is holding wider public consultation meeting, not to be seen to be prejudging the proposal.
26. Unlike Screening Opinions it is much harder to produce Scoping Opinion Checklists because of the potential scope of issues but they can be a useful aide memoire. The EU guidance provides details of how to develop a matrix for Scoping Opinions.

27. Where a formal Scoping Opinion is sought from a Local Planning Authority, it is mandatory for the authority to consult the statutory consultees. It is usually good practice to include relevant non-statutory consultees.

Permitted Development

28. Many authorities now provide officers with a checklist to use for permitted development enquiries. Permitted Development is suspended for development which falls within the categories of development set out in Schedule 2 of the Regulations and either (a) meets or exceeds the size thresholds or (b) is within a sensitive area, a Screening Opinion is a mandatory requirement. This includes a range of developments such as industrial development, waste related development and highways works. Only once a Screening Opinion has concluded that an Environmental Statement is not required, are permitted development rights re-instated.
29. It is important that any officers involved in the consideration of permitted development enquiries consider whether the development would fall within the categories of development in Schedule 2 of the Regulations. For this reason a checklist provides both a reminder for staff and an audit trail to demonstrate that the matter has been considered.

Enforcement

30. Prior to issuing a formal Enforcement Notice, local planning authorities must consider whether the development in question falls within Schedule 1 or Schedule 2 of the Regulations. This is because of the deemed application provisions available should an enforcement appeal be submitted and thus the potential for planning permission to be granted on appeal. If it is a Schedule 2 development and meets the necessary criteria, then a Screening Opinion must be prepared before the Enforcement Notice is issued.
31. An experienced enforcement officer will usually be capable of completing a Screening Opinion checklist and provided this is signed off by a duly authorised senior officer, it will not always be necessary to involve a planning case officer.
32. If the Screening Opinion concludes that an Environmental Statement is required then the Enforcement Notice must be accompanied with a 'Regulation 25 Notice'. A model notice can be found in the EIA Regulations.
33. If a Screening Opinion is not undertaken by the authority, PINs will issue one if an appeal is submitted. Anecdotal evidence suggests that PINs are in general less likely to seek an Environmental Statement than a local planning authority.

Habitat Regulations

34. Development proposals can be subject to both the EIA Regulations and the Habitat Regulations.
35. Sites designated as a Special Area of Conservation, Special Protection Area or Ramsar sites (most will also be designated as a SSSI) will need an Appropriate Assessment if the proposal is not directly connected with or necessary for nature conservation management and is considered likely to have significant effects.
36. Whereas an Environmental Statement involves consideration of the significant environmental impacts and ultimately a balancing act between the various issues, an appropriate assessment under the Habitat Regulations specifically focuses on the impact on the particular features and conservation objectives of the site's designation. If the effects of development are uncertain permission should not be granted. It is not for the authority to show that the proposal would actually harm the site.

37. If there are no alternative solutions, the authority can only approve the development if there is an 'overriding public interest' in doing so but compensation must be provided and as a minimum, compensation must ensure no net loss in terms of area or quality. If doubt remains as to the absence of adverse effects on the integrity of the protected area in question, the authority will have to refuse authorisation.
38. There is no particular method for carrying out an appropriate assessment although there are requirements for specific consultations and given the high degree of certainty required for any decision, these consultations will be important. It is important that the decision on the appropriate assessment is taken by an officer with the correct delegated powers and that the decision is fully recorded. The officer's report should also set out and clearly address the issues as to why the mitigation measures would or would not protect the designated area.

Decision Notices

39. The 1999 Regulations require a local planning authority to execute a number of post decision procedures, including the advertisement of the decision. These requirements were updated by the 2006 amendment Regulations.
40. It is important that the reasons for the decision are fully recorded, especially if there are discussions at the committee meeting which add or subtract from the officers' stated reasons for the decision.
41. A local planning authority must place with the planning register a *statement* containing the: decision (including conditions); *main* reasons & considerations for the decision; including any information about public participation if relevant; description of the *main* measures to avoid, reduce or off set major *adverse* effects; information on the right to challenge the decision and the procedures for doing so. These requirements apply (where appropriate) to both approvals and refusals.
42. Although many authority's will make the committee report available in order to meet some or all of these requirements it is good practice if a separate statement is produced in order to meet these requirements.
43. Any decision notice must confirm that the authority took into account all the environmental information before reaching its decision.

Useful References

1. [Environmental Assessment A Guide to Good Practice and Procedures](#) - CLG May 2006
2. [Office of Publications of the European Community: Guidance on Screening and Scoping](#)
3. [The Essex Guide to Environmental Impact Assessment](#) - Essex Planning Officers Association

The project

The Development Management Practice Project is sponsored by the Planning Officers Society, and is run on its behalf by POS Enterprises and Trevor Roberts Associates. The local authorities involved in the project are Arun, Ashford, Barnsley, Bournemouth, Broadland, Caradon, Chiltern, Hambleton, Hampshire, Lichfield, Portsmouth, Redcar &

Cleveland, Richmond, Suffolk, Swindon and Wycombe. Finalised guidance is published on the POS and TRA web site and circulated direct to Society members.