

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 14 October 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: CONSULTATION BY DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT REGARDING CHANGES TO ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

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Chief Officer: Bob McQuillan, Chief Planner

Ward: All

1. Reason for report

The Department of Communities and Local Government (CLG) is seeking comments on proposed amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations which are required by 2 recent High Court and European Court judgements, with some other minor changes.

2. **RECOMMENDATION(S)**

A copy of this report including the responses in the Appendix be forwarded to the CLG.

Corporate Policy

1. Policy Status: Existing policy. Planning policies in the Unitary Development Plan
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Planning Division budget
 4. Total current budget for this head: £3.2m
 5. Source of funding: Existing revenue budgets
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Staff

1. Number of staff (current and additional): 98
 2. If from existing staff resources, number of staff hours: None
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Boroughwide
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 CLG propose consolidation of the 1999 Environmental Impact Assessment Regulations (as amended in 2008). The main changes concern “screening” of proposals for changes/extensions to existing schemes as to whether they bring them within the scope of the Regulations. The consultation papers include draft revised Regulations.
- 3.2 The existing Regulations require that planning applications for certain types of development shall be accompanied by an Environmental Impact Assessment (EIA). For “Schedule 1 developments” (eg power stations, landfill of hazardous, oil refineries, paper mills) an EIA (or Environmental Statement (ES)) is mandatory. Schedule 2 defines other development which may require an EIA/ES, dependent on whether it is in a sensitive area (eg Site of Special Scientific Interest, Area of Outstanding Natural Beauty) and subject to thresholds set out.
- 3.3 In this Borough developments that may require an EIA/ES typically fall within Schedule 2 and comprise industrial estates and urban development projects above a threshold of 0.5 hectares site area eg shopping centres, car parks, sports stadia, leisure centres and multiplex cinemas, as defined in the Regulations.
- 3.4 As such, all proposals for developments on sites of over 0.5 hectares are “screened” at pre-application stage or during application processing regarding the need for an EIA/ES. A screening opinion is a written opinion of the relevant planning authority as to whether development is “EIA development”. Selection criteria for screening Schedule 2 development are set out in Schedule 3 of the Regulations under the following headings – characteristics of development, location of development and characteristics of potential impact. The vast majority of developments screened in the Borough over the years have not been “EIA development” by virtue of their modest size, location in areas that are not environmentally sensitive, and limited magnitude of impacts.
- 3.5 Developments in the Borough that have required an EIA/EA have included the Shortlands Junction scheme implemented by Network Rail in 2002 and the Crystal Palace Park Masterplan by the London Development Agency. Developments which have environmental impacts, but are not “EIA development” must be accompanied by relevant technical reports, eg Transport Assessment, Flood Risk Assessment, Biodiversity Report, Heritage Statement, Arboricultural Survey & Report etc. The need for such documents is generally discussed between applicants and officers at the pre-application stage, but applications can be invalidated at receipt if requirements for documentation set out in the “Local List” (adopted by the Development Control Committee on 08.07.08) are not met. It is at officers’ discretion whether to require information regarding impacts of a development, and such requests for documentation are made on a case by case basis.
- 3.6 This is considerable case law regarding the Regulations and their interpretation/implementation, as a result of challenges by affected parties, environmental lobbyists etc. The changes proposed now are to take account of recent case law, and amendments to the European Directive on EIAs that has been applied to England by the Regulations. A limited number of other amendments are proposed, but as the European Commission is reviewing the Directive, the CLG is not proposing a fundamental review of the operation of the EIA regime, as it might be premature.
- 3.7 The key changes proposed to the Regulations are set out in the consultation as follows –
- **Proposals to change or extend existing development** – It is proposed that the thresholds in Schedule 2 shall apply to the development as a whole once modified, and not just to the change or extension. It is also proposed to add a new provision that will

require any change or extension to an existing or approved Schedule 1 project to be screened for the need for EIA where the change or extension is not a Schedule 1 development in its own right.

- **Reasons for negative screening decisions** – A new provision will make it clear that where the Secretary of State issues a screening direction or a planning authority a screening opinion that EIA is not required (ie a “negative screening decision”), they shall make available their reasons for that conclusion, as they already do when EIA is required.
- **Multi-stage consents** – It is proposed to remove a provision which goes beyond the requirement of the Directive (ie “gold plating”) which was inadvertently introduced through the 2008 amending Regulations. It applies to multi-stage consents (eg applications for outline planning consent and the subsequent application for approval of reserved matters). There is currently an unintentional requirement for public consultation on the ES at each stage, even where the ES produced at the outline stage satisfies the requirements of the EIA Regulations at the later stage – this is to be removed.
- **Other changes** – It is also proposed to make a small number of other changes to generally update the Regulations and address minor drafting issues. These include a proposed amendment to the threshold and criteria for wind farms and the removal of the criminal offence provision where an applicant is required to publicise an environmental statement. There is also a requirement to add new categories of development to Schedules 1 and 2 to the Regulations to take account of amendments made to the EIA Directive regarding the geological storage of carbon dioxide.

It is proposed to cancel Circular 02/99 and replace it with update guidance shortly after the new Regulations come into force.

3.8 CLG set a number of questions for consultees to respond to when commenting, and these are set out in the Appendix to this report. The matters covered are as follows –

- Q1 and Q2 concern changes or extensions for existing development, necessary because of the High Court judgement in the “Baker” case.
- CLG propose to update guidance on directions by the Secretary of State (SoS) (in Regulation 4), to explain how planning authorities can request the SoS to consider a screening direction for projects that are described in Schedule 2, but are not Schedule 2 development as they fail to meet the relevant criteria or thresholds, and explain how third parties can make representations to authorities where they feel an EIA is required (see Q3).
- Where the thresholds in Schedule 2 make reference to “proposed development”, “area of any new building”, “new floorspace” etc, it is anticipated that difficulties may arise when interpreting the thresholds for a change or extension. To help clarify the application of the Schedule 2 thresholds to changes or extensions it is proposed to add a proviso that disappplies the concept of “new” in relation to the existing or approved development that is being modified (see Q4).
- Q5 concerns the need (if any) to amend Schedule 3 (selection criteria for screening Schedule 2 development) and Schedule 4 (information for inclusion in ESs). CLG considers that as the Regulations already require an ES to address not only direct (but also indirect and cumulative) effects, there is no need to change these Schedules.

- Q6 concerns the proposed requirement for reasons to be given for all screening opinions/directions.
- Q7 concerns criteria and thresholds for wind turbines, it is proposed to increase the threshold criteria for total height (including the rotor blade) from 15 to 18m.
- Q8 concerns the draft impact assessment of the proposed changes to the Regulations.

Non-Applicable Sections:	Policy, Financial, Legal and Personnel Implications
Background Documents: (Access via Contact Officer)	The Town and Country Planning (Environmental Impact Assessment) Regulations 2010 – Consultation on draft Regulations by DCLG, August 2010.

Appendix

Q1 Do you agree that applying the existing Schedule 2.13(a)(ii) thresholds to Schedule 1 development as *changed or extended* will always trigger the threshold and hence require screening?

Yes

Q2 Do you agree that, in light of the Baker judgement, all changes or extensions to Schedule 1 development should be screened for any likely significant effects on the environment?

Yes

Q3 Do you have any comments on what information the guidance should provide for planning authorities and third parties?

The discretion that local planning authorities have to request technical assessments and other material to accompany planning applications is relevant where an EIA is not required, and enables consideration of environmental impacts without the submission of a formal EIA.

Q4 Do you agree that disapplying “new” will help to clarify the Regulations as they apply to changes or extensions?

Yes, this would seem to clarify the law.

Q5 Do you agree that no changes are needed to Schedules 3 and 4 of the 1999 EIA Regulations?

Yes

Q6 Do you have any comments on the requirement in draft regulation 4(5) and (7) for reasons to be given for all screening opinions/directions, as set out in Annex B?

No

Q7 Do you have any comments on the proposed rewording of the criteria in Schedule 2.3(i), and the proposal to increase the threshold from 15 to 18 metres?

No

Q8 Do you have any comments on the draft impact assessment contained at Annex E of this paper. In particular:

- (a) Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?
- (b) Have any significant costs and benefits been omitted? If so, please give details including any groups in society affected and your view on the extent of the impact.
- (c) Have any significant risks or unintended consequences not been identified? If so please describe.
- (d) Do you think there are any groups disproportionately affected?

No.