



PLANNING COMMITTEE – 12 OCTOBER 2016

SUBJECT: WELSH GOVERNMENT CONSULTATION PROPOSED CHANGES TO HOW ENVIRONMENTAL IMPACT ASSESSMENT APPLIES TO TOWN AND COUNTRY PLANNING

REPORT BY: CORPORATE DIRECTOR - COMMUNITY SERVICES

1. PURPOSE OF REPORT

- 1.1 Welsh Government (WG) is currently running a consultation on proposed changes to how Environmental Impact Assessment applies to Town and Country Planning. The proposals are summarised below and answers are suggested to the questions asked by WG. The paper can be read in full in the consultation section at Welsh Government's website.

2. SUMMARY

- 2.1 This consultation paper sets out the WG's proposals for transposing the provisions of an EU 2014 EIA Directive and making other changes to national legislation. It sets out their proposals on the following areas:
- Third party screening requests;
 - Screening and scoping timeframes;
 - Co-ordination;
 - Consultation and participation in the decision making process;
 - Monitoring of significant effects;
 - Penalties and enforcement;
 - Competent experts;
 - Purchase notices under Section 141 of the Town and Country Planning Act 1990 (TCPA);

3. LINKS TO STRATEGY

- 3.1 The report takes account of the adopted Caerphilly County Borough Local Development Plan up 2021.

4. THE REPORT

- 4.1 Third party screening requests

Significant development projects are screened to determine whether they should be the subject of an EIA. Third parties are entitled to ask for a screening opinion by Welsh Ministers, but there have been concerns that if this is requested at a late stage in the determination process it will hold up planning decisions. A 35 day limit is proposed based on it taking up to 14 days to place the screening opinion on the planning register so that it is known to the public, and 21 days are then provided for the public to understand the decision and submit a request for a screening direction to the Welsh Ministers.

Q1: Do you agree with our proposals for third party screening? If not, what proposals would you recommend to ensure third party screening requests are made early in the application process.

Answer: No. The period should be shorter. If it is expected that LPAs will take up to 14 days to place their screening opinion on the register, a further 7 days would be adequate for a third party to make a screening request to Welsh Ministers. In effect, if third parties are interested in an application, they will then have three weeks in which to monitor the progress of an application, have a dialogue with the LPA about an EIA, and then, if necessary, make their request. Email allows that request to be made quickly.

4.2 Timeframe to provide a scoping request

An applicant is not required to consult about the information to be included in an ES to accompany an EIA application. However, they may ask the LPA for its formal opinion on the information to be supplied in the ES (a 'scoping opinion'). This allows the LPA to clarify the aspects on which the applicant's ES should focus and the level of detail required. At present a five week deadline is allowed for the provision of an opinion. WG wants LPAs' opinions on whether that timeframe should be extended not least because the directive requires an ES to be based on the scoping opinion where one is given.

Q2: Do you think the timeframe associated with scoping should be revised? If yes, what timeframe do you consider appropriate and why?

Answer: Yes. The period for the submission of the scoping opinion should be at least eight weeks, with scope for an extension with the agreement of the applicant. The consultation, discussion and research required to provide a scoping opinion is similar to that associated with the determination of a planning application. And if it is intended to link the content of an ES to the scoping opinion, there is greater pressure on the LPA to give a correct decision.

4.3 Coordination

The 2014 EIA Directive has sought to reduce the complexity of consenting and assessment processes for developers by requiring the coordination of procedures where projects fall to be assessed simultaneously under the EIA, Habitats and Birds Directives. WG do not intend to provide for joint procedures. They consider that coordinated procedures offer the greatest flexibility for developers on the phasing and timing of EIA and HRA.

Q3: Do you agree with proposals to provide for a coordinated rather than joint procedure?

Answer: Joint procedures would be unduly burdensome on the LPA; and the same would be true of a coordinated procedure unless it is made clear that it is the developer's responsibility to secure any approvals under the Habitats and Birds Directives simultaneously with the planning permission, and any delay does not hold up the processing of the planning application.

Q4: What coordinating measures would be most useful, and what benefits would they generate?

Answer: This is best answered by the development industry, but care must be taken to ensure that the planning system does not become too unwieldy through its linkages with other consenting regimes.

4.4 Consultation and participation in the decision making process

The directive requires the electronic advertisement of EIA applications to enhance public participation, and WG intend to promote that.

Q5: Do you agree with our proposals for making information available electronically?

Answer: Yes

4.5 Monitoring of significant effects

The directive requires that the decision to grant development consent should include, where appropriate, monitoring measures. It requires what is monitored and the duration of the monitoring to be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication. WG proposes to impose a general requirement on the LPA, or Welsh Ministers to include monitoring measures where appropriate, leaving it to their discretion as to what factors should be monitored and for how long. They consider the existing system of planning conditions and obligations provides the necessary mechanisms to implement the directive while retaining flexibility.

Q6: Do you agree our approach provides the most flexible approach to the 2014 EIA Directives requirements?

Answer: No. The approach lacks clarity, and in principle, any general requirement to monitor a development should be resisted as it will place an unnecessary and significant burden on LPAs. However, it is accepted that the directive must be complied with, which is why further guidance is needed on what areas may need to be monitored, and to what extent.

4.6 Conflict of interest and functional separation

To comply with the directive it is proposed to amend the regulations to require that when any authority (such as LPA or the Welsh Ministers) has a duty under the EIA Regulations they must take any steps to ensure they do so in an objective manner.

It is also proposed to require that where the developer and the relevant determining authority are the same person, the relevant authority must ensure a functional separation between those persons seeking development consent and those responsible for determining whether development consent should be granted.

Q7: Do you agree with our proposals for conflict of interest and functional separation?

Answer: The principle is acceptable but there is concern about the vagueness of the word 'objective' unless it can be shown that its meaning has been defined by case law to a satisfactory extent. Alternatively, is there language used in other legislation that could be used.

4.7 Penalties and enforcement

The submission of false information as part of an ES is adequately covered by existing criminal legislation, and so it is intended to rely on that rather than introduce new regulations.

Q8: Do you agree with the proposed approach to false or misleading information within the EIA process?

Answer: Yes

Unauthorised development is liable to enforcement action, and that includes EIA development. WG propose to place an explicit duty on LPAs to consider if the requirements and objectives of the EIA Directive have been met when they are considering taking enforcement action.

Q9: Do you agree that our proposed approach to enforcement will ensure the effective compliance with the requirements of the EIA regulations in a proportionate way and in a way which dissuades bodies which are part of the process from failing to comply?

Answer: No. The requirement here is unclear. The EIA process is an administrative one that ensures that the appropriate information is submitted when a large scale development that is likely to have a significant effect on the environment is proposed. It says nothing about when a development is acceptable or not, and whether it would be expedient to take enforcement action in any particular circumstance. Further thought needs to be given to what WG is trying to achieve in this respect. Is it the case that where expediency is being considered, should the need for an EIA also be taken into account in making that decision, and where it is needed, is enforcement action more likely?

5. EQUALITIES IMPLICATIONS

5.1 There would be no equalities implications in respect of this recommended response.

6. FINANCIAL IMPLICATIONS

6.1 None.

7. PERSONNEL IMPLICATIONS

7.1 None.

8. CONSULTATIONS

8.1 None.

9. RECOMMENDATIONS

9.1 That Officers reply to the questions set out in the consultation on the basis of the comments above and any additional comments from Members.

10. REASONS FOR THE RECOMMENDATIONS

10.1 As set out in the report above.

11. STATUTORY POWER

11.1 The Town and Country Planning Act 1990 and related acts and statutes.

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Background Papers: Consultation from Welsh Government