Directorate of Environment and Regeneration • Planning Services

LOCAL PLANNING GUIDANCE NOTE NO. 21: ENVIRONMENTAL IMPACT ASSESSMENTS

Background

Environmental Impact Assessment (EIA) is a procedure which must be followed for certain types of project before they can be given 'development consent', that is, any authorisation from a regulatory body which would allow a development to take place. Information about the likely significant environmental effects of these developments is collected and assessed in a systematic way. An **environmental statement (ES)** is the document resulting from the EIA which accompanies the planning application, and the responsibility for producing it resides with the developer. The EIA should be taken into account by both the developer, as part of the project design, and by the local planning authority (LPA) in deciding whether planning permission should be granted. If the developer undertakes the task properly, this should facilitate the smooth running of the planning approval process. **The process is summarised below**. It includes **two key stages, screening and scoping**, which are outlined here and described more fully later. A screening opinion determines whether an EIA is needed, and is provided by the LPA. A scoping opinion identifies the range of information which the LPA considers must be contained within an ES.

Main Steps of the EIA Process

- Project Initiation – Design with the Environment in mind
- Screening – Is EIA required?
- Scoping and pre-application discussions
- Environmental Studies
- Preparation of Environmental Statement (ES)
- Submission of planning application with ES
- Review of the ES by planning authority and consultees (possible request for further information)
- Evaluation of environmental information and other material considerations by planning authority
- Decision: refuse or grant (with or without conditions)
- Implementation and Monitoring

For the LPA and other public bodies having environmental responsibilities, **the EIA provides a better basis for decision making**. The process means that environmental factors can be given due weight, along with economic and social factors, and it helps to promote sustainable development. **Consideration of an EIA by all parties at an early stage can lead to adjustments which produce a better environmental outcome.** Furthermore, **EIA may prevent abortive expenditure** on a development proposal by identifying elements which would have seriously adverse environmental effects and demonstrating whether or not they can be mitigated. Where they cannot, it may be possible to delete or change those elements to prevent or minimise the environmental damage. Where neither prevention nor minimisation is possible the ES would have to explain why the LPA should consider the predicted damage acceptable. In addition, the ES - a public document which must include a summary in non-technical language - **allows the public to understand the importance of the predicted effects and the scope for reducing them.**

It is important to understand the **significance of European Community (EC) law** in environmental impact assessment, particularly because the EC receives many complaints that authorities have breached procedural

requirements. The UK Government has a responsibility to uphold and implement EC law, and failure to do so could lead to infraction proceedings being taken against the Government. For its part, the National Assembly of Wales (NAW) will seek to ensure, in essence on behalf of the UK Government, that breaches do not occur.

The need for EIA has changed the planning process in some respects. Furthermore, the Regulations have **increased the scope for legal challenge to planning decisions**, and so it is important that the LPA proceeds properly. This Local Planning Guidance Note (LPG) outlines when an EIA is necessary and how to carry it out. However, for a definitive statement, reference must be made to the official sources, in particular the Regulations, referred to in the next section.

Policy

The requirement for EIAs began with a **European Community Directive (97/11/EC)**, which stated "the assessment procedure is a fundamental instrument of environmental policy" and that "Community policy is based on the precautionary principle and on the principle that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay." The UK courts are obliged to ensure that community rights are fully and effectively enforced, and a local authority such as Flintshire County Council is under a direct duty to respect Community law, but a court will not intervene if decisions taken are reasonably open and all relevant material and guidance has been taken into account.

In the United Kingdom, the **Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999** spell out the process, supplemented in Wales by guidance in **Welsh Office Circular 11/99 'Environmental Impact Assessment'**. This LPG is based on these sources but it is emphasised that it is intended as an outline and is not a substitute for them. All parties should be aware that EIA is very much a field in which case law is ongoing, and therefore, ultimately they must satisfy themselves that their information is up to date, accurate and specific.

In Flintshire, the County Council's **Unitary Development Plan (UDP)** contains one specific policy of relevance**, Policy GEN 6 Environmental Assessment**:

"Development proposals that are likely to have a significant impact on the environment must be accompanied by:

a. an Environmental Statement as required under the 'Environmental Impact Assessment' regulations; or

b. suitable supporting environmental impact information in all other cases."

The latter is to enable the LPA to assess adequately the environmental impacts of all developments.

When EIA is needed

In this context, **the Regulations define two types of development:**

- **Schedule 1 projects, for which EIA is always required**. Schedule 1 projects are normally clear, but in cases of doubt an opinion can be obtained from the LPA or a direction from the NAW.
- **Schedule 2 projects, for which EIA is required only if the particular proposal is judged likely to give rise to significant environmental effects because of its nature, scale or location. Thresholds and criteria** help to discount development which is not likely to have significant effects on the environment. The exception is where the proposal is in, or partly in, a **sensitive area**, including the Clwydian Range Area of Natural Beauty, Sites of Special Scientific Interest, and scheduled ancient monuments, where the thresholds and criteria do not apply. Even so, there is no presumption that every Schedule 2 development in a sensitive area will require EIA. Where LPAs are uncertain about the significance of a project's likely effect upon the environment, they should consult the Countryside Council for Wales (CCW). The Assembly, advised by the CCW, has powers to call in for its own determination planning applications likely to affect significantly sites of more than local importance, and it has powers to direct that a development requires EIA even where it is below thresholds or not in a sensitive area. Some developments, which are far below the Schedule 2 thresholds, may require EIA if by cumulation with other existing developments they reach the threshold criterion or are likely to have significant effects.

Appendices 1 and 2 summarise these Schedules in order to give an idea of the types of development covered, but it should be understood that the complete lists are much longer.

How "significance" is assessed

The LPA must consider the need for EIA projects further for projects: listed in Schedule 2; in or partly in a sensitive area; or which meet one of the relevant criteria or exceed one of the thresholds, The LPA must consider further, starting with reference to **Schedule 3** of the Regulations. This shows that **EIA is likely in the cases of:**

- **Major developments of more than local importance**
- **Developments in sensitive or vulnerable locations**
- **Developments with complex and potentially hazardous environmental effects**

But, reiterating for safety's sake, it should not be presumed that smaller developments will not require EIA, nor that larger ones will automatically require EIA. The thresholds must be used in conjunction with the general guidance on EIA, which provides a starting point for consideration by the applicant and the LPA.

Screening for EIA development

Every application must be screened for EIA, although few will actually require it. If the applicant did not request a pre-application **screening opinion**, the LPA must undertake one when the application is submitted. In Flintshire the decision on the need for EIA is made by the Chief Planning Services Officer under his delegated powers. An applicant who has not raised the matter until lodging an application risks serious delay if it is then ruled that an ES is needed.

Even where the LPA has given a pre-application opinion, it can change its mind in the light of new evidence.

Following the receipt of a request for a screening opinion, the LPA has up to 3 weeks to provide it, unless the applicant agrees to a longer period. If an application for EIA development is submitted without an ES, the LPA has **three weeks from the date of receipt of the application** to issue a screening opinion. **It is important therefore that validating officers identify applications that might require an ES at an early stage**, taking into account the relevant "selection criteria" in Schedule 3 to the Regulations. Should the applicant be dissatisfied with the LPA's opinion that EIA is required, they may refer the matter to the NAW.

The project categories in the EIA Directive are expressed in general terms to forestall any argument that EIA is not required in what might otherwise be a borderline case.

A detailed and comprehensive assessment of every aspect is not required before a decision is taken on the need for EIA.

As part of the screening opinion process, when the LPA decides an EIA is required, it must provide a clear and precisely reasoned written statement saying why. **In all cases (including screening opinions to the effect that EIA is not required) the LPA must keep a record of the issues considered and its reasoning**, not least in case there is a complaint or challenge later.

Where the LPA initially gave a negative opinion and later becomes convinced that EIA is required, it will then ask the Assembly to direct on the matter, for in such circumstances it cannot grant consent without undertaking EIA unless the Assembly directs that EIA is unnecessary. Case law has established that a negative determination by an LPA is not determinative, unlike one by the Assembly. In each case the competent authority has to make an informed judgement on the basis of the information available to it, as to the question of what is a **significant impact**, weighing the relevant factors. **A court will intervene only if the LPA has acted unreasonably**. Any uncertainty about the need for EIA has to be resolved in favour of requiring EIA.

Occasionally, possibly as a consequence of third party representations, the NAW can issue a direction even when the developer has not requested one or it can over rule the LPA's opinion that EIA is not required.

When an applicant receives notification from the LPA that EIA is required for an application made without an ES, the applicant should write to the LPA within 3 weeks of the date of notification saying either that an ES will be submitted, or that the applicant is writing to the Assembly Government asking for a screening direction. If the applicant does not write to the LPA within the 3 week period, the application is deemed to be refused and there is no right of appeal.

Scoping

Developers should be encouraged to obtain a formal opinion from the LPA on what should be included in the ES. Again, the Chief Planning Services Officer has delegated powers. The **scoping opinion** identifies the range of information which the LPA considers must be included in the ES. Before adopting one, the LPA must consult the developer and appropriate consultation bodies (such as the Environment Agency, the CCW and Cadw), but is not bound by their advice. It is **advisable to engage in pre-application discussions about the scope of an ES**, to improve the quality of the ES. Failure to include in an ES all the information required by a scoping opinion does not render it invalid but if information is statutorily required the application can only be rejected. The LPA may ask for further information if the ES is deficient, and time taken by the applicant in providing this information does not count as part of the 16 week period. A scoping opinion is not binding, so if it becomes obvious to the LPA during the process of considering an application that further information is required, it must be provided.

The scoping opinion must be made within 5 weeks of receiving the request or the applicant is entitled to ask the Assembly for a scoping direction. Officers should consider at an early stage whether an extension of time will be needed and agree this in writing with the applicant. **Where the screening and scoping option is requested simultaneously, the LPA must adopt a scoping opinion within 5 weeks of the screening opinion being adopted**, and a copy must be sent to the applicant. It must be kept for 2 years on the statutory register for public inspection.

The preparation and content of environmental statements

Schedule 4 to the Regulations sets out the required information. Any ES should include the following as **minimum requirements**:

- A description of the development covering site, design and size.
- A description of measures proposed to avoid, reduce or remedy significant adverse effects.
- The data needed to identify and assess the main effects which the development is likely to have on the environment, normally including an independently assess environmental performance assessment.

- An outline of the main alternatives with reasons for their rejection.
- A non-technical summary of the above information.

When preparing the ES the applicant should consult those bodies holding relevant information, which in turn are obliged to respond.

A good ES should enable readers to understand for themselves how its conclusions have been reached, and to form their own judgements on the significance of the environmental issues raised by the project. The ES does not need to provide detailed information about every single environmental effect. Under the EIA Directive, **assessment is required of those impacts which are likely and significant**. The ES should comply with Regulations, and provide comprehensive information, adequate methodology, well organised presentation, and be transparent, objective and impartial. **There must be a proper assessment of emissions to air and water**, not merely a statement of compliance. **The ES must deal with all stages of the development from site preparation and construction, to operation and (where relevant) termination, restoration and after-care**, so that an informed decision can be made about all the proposal's effects.

The Assembly cannot become involved in questions concerning the adequacy of ESs because to do so could prejudice its position should there be an appeal or call in. But if it is brought to the Assembly's attention that an ES is substantially inadequate and the LPA appears not to be taking action to address the deficiencies, the Assembly will intervene because of the UK duty to comply with Community law. **The Institute of Environmental Assessment can help** and will review the adequacy of one ES per authority per year, free of charge. It should be noted that the issues considered by the Institute will be those of methodology rather than the validity of the information and conclusions.

Submission of a planning application with an Environmental Statement

Flintshire County Council requires an ES for all relevant development. In addition to the steps taken with any other planning application, the application and ES must be publicised by site notice and press advertisement stating that an ES has been submitted, where the documents can be inspected free of charge, where copies of the ES may be obtained, the cost of a copy, and giving the date (at least 21 days) by which any written representations should be made to the Council.

Submission of an Environmental Statement after the planning application

Whilst the procedures are similar to the above, it is the applicant's responsibility to post site notices, notify the public and advise that representations may be made to the Council prior to submitting an ES.

Consideration of Environmental Statements and EIA planning applications

The **timeframe for dealing with the application is extended to 16 weeks** from the date of receipt of the ES, although this can be extended with the applicant's agreement. The application is not invalid because an inadequate ES has been supplied but if the information supplied is inadequate the application must be refused. If an ES is not received, the Council can refuse to consider it until the ES is received.

Outline applications

Whilst it is possible for an EIA application to be submitted in outline form, case law has established that generalised descriptions of development are insufficient to comply with the Regulations. An EIA application must be properly assessed for possible environmental effects prior to the grant of outline planning permission, because **an EIA cannot be required at the reserved matters stage**. The LPA may therefore decide that it cannot entertain an outline application unless further details are submitted concerning the siting, design, external appearance, access or landscaping. Conditions would need to be attached to tie the outline permission to the documents which comprise the application and restricting it so that reserved matters applications do not result in factors that have not been described and assessed at the outline stage. It is possible to tie the permission to the ES by means of a Section 106 agreement rather than a condition. Any application for reserved matters that went beyond the parameters of the ES would be unlawful.

Can consent be granted for a project that will have a significant impact on the environment?

The EIA Directive is not determinant: **it is possible for an environmentally damaging project to go ahead.** The LPA must balance the economic and other benefits against environmental damage in reaching a decision, weighing these as it thinks fit. The EIA process must have been undertaken properly and the decision must have been taken in the full knowledge of its potential environmental effects, based on the information available, guidance and all other material considerations.

The decision

When the LPA determines an EIA application, the report must refer to the ES and make clear that the information in the ES has been taken into account in coming to the recommendation.

After making the decision, the LPA must:

- **Inform the NAW** in writing of the decision
- **Inform the public** of the decision by publishing a notice in a local paper or by such other means as are reasonable in the circumstances, including use of the website.

- Make available for public inspection, where the planning register is kept, a **statement** of he content of the decision, the main reasons and considerations for the basis of the decision, and a description of the main mitigation measures to avoid, reduce or offset the adverse environmental impacts of the development.

Applications for amendment or deletion of a condition

Such applications are fairly common, particularly in relation to minerals and waste permissions. Case law has established that they are for full permission, therefore they are applications for development consent, and therefore **subject to EIA**. If the developments they relate to are Schedule 2 developments, they must be screened. Such applications are often for an extension of time to commence or complete a development or to submit details required by a condition. EIA will not be appropriate unless the extension of time may itself have significant environmental effects. It should be noted that the Planning and Compulsory Purchase Act 2004 removes the right to make applications for extension of time for commencement or submission of reserved matters in England. Such applications are still valid in Wales.

EIA and enforcement

When deciding whether to initiate enforcement action, the LPA must decide whether the matters constituting the breach of planning control comprise or include Schedule 1 or 2 development and, if so, adopt a screening opinion before the enforcement notice is issued.

If EIA is required the LPA must serve a Regulation 25 Notice with the enforcement notice giving full reasons why, sending a copy to the Assembly and the consultation bodies.

EIA and permitted development

Regulation 35 amends the General Permitted Development Order with respect to EIA:

- Schedule 1 development is not PD, and always requires the submission of a planning application and an ES.
- Schedule 2 development does not constitute PD unless the LPA has adopted a screening opinion to the effect that EIA is not required. Where the LPA's opinion is that EIA is required, PD rights are withdrawn and a planning application and ES must be submitted.

The Circular (paragraphs 151 to 156) specifies certain minor classes to which the above requirements do not apply.

Appendix 1: Developments for which EIA is mandatory (Schedule 1 Development)

This list summarises (by heading only) the 20 classes of development which are in Schedule 1 of the EIA Regulations.

1. Crude oil refineries
2. Thermal and nuclear power stations
3. Installations for reprocessing nuclear fuel and carrying out other processes involving high-level radioactive material
4. Cast-iron and steel smelting works and other metal production
5. Asbestos extraction and processing
6. Manufacture on an industrial scale involving chemical conversion processes
7. Construction of major roads, railways and airport runways
8. Waterways and ports
9. Waste disposal installations for hazardous waste
10. Waste disposal for the incineration or chemical treatment of non-hazardous waste
11. Groundwater abstraction or recharge
12. Major water works
13. Large waste water treatment plants
14. Extraction of petroleum and natural gas
15. Large water storage
16. Pipelines for gas, oil or chemicals
17. Intensive rearing of poultry or pigs
18. Production of pulp, paper and board
19. Quarries and opencast mines
20. Storage of petroleum, petrochemical or chemical products

Some of these categories are subject to scale thresholds or criteria. For example, category 17 applies only to installations with more than (a) 85,000 places for broilers or 60,000 places for hens, (b) 3,000 places for production pigs (over 30 kg) or (c) 900 places for sows. Therefore the Regulations should be checked before deciding.

Appendix 2: Developments where EIA may be necessary (Schedule 2 Development)

Various sub-categories are listed under the following headings in Schedule 2, in each case with applicable thresholds and criteria

1. Agriculture and aquaculture
2. Extractive industry
3. Energy industry
4. Production and processing of metals
5. Mineral industry
6. Chemical industry (unless included in Schedule 1)
7. Food industry
8. Textile, leather, wood and paper industries
9. Rubber industry
10. Infrastructure projects
11. Other projects
12. Tourism and leisure
13. Changes to or extensions of developments listed in Schedule 1.

These categories cover most development. For example, category 10 includes housing developments although this is not stated in the Schedule.

Appendix 3: The selection criteria for screening Schedule 2 development

This list has been adapted from Schedule 3 of the Regulations.

(a) Characteristics of the development

- How big is it?
- How much would it increase adverse impacts from other, existing developments?
- How sustainable is its use of natural resources?
- What wastes does it produce?
- What pollutants would be produced and what nuisances created?
- What would be the (worst case) risk of accidents and their consequences?

(b) Location of the development

- What is the level of environmental sensitivity of geographical areas likely to be affected by the development?
- What are the existing land uses?
- What are the natural resources in the area (relative abundance, quality and regenerative capacity)?
- What is the absorption capacity of the natural environment particularly habitats such as wetlands, coastal zones, mountains and forest, nature reserves and parks, protected habitats (SSSI, SAC and others), areas where the environmental quality standards laid down in community legislation have already been exceeded, densely populated areas and landscapes of historical, cultural or archaeological significance?

(c) Characteristics of the potential impact, particularly:

- The extent of the impact (geographical area, size of affected population.
- Any transfrontier nature of the impact (that is, between member states of the European Community).
- Magnitude and complexity of the impact, the probability of the impact and the duration, frequency and reversibility of the impact.