

“Multi-stage consents”

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What are multi-stage consents?

- “Development consent” is the decision of the competent authority that entitles the developer to proceed with the project (Article 1(2))
- A multi-stage consent is where the national procedure comprises more than one stage – a principal decision followed by an implementing decision that cannot extend beyond the parameters set by the principal decision

Case C-290/03 Barker

Case C-508/04 Commission v. UK

- EIA should be undertaken at the earliest possible stage
- However, in some circumstances EIA may be required at the second stage
- Such assessment has to be of a “comprehensive nature” so as to relate to all aspects of the development which had not yet been assessed or which require a fresh assessment
- UK planning law was held contrary to the Directive in not providing for EIA at second stage

UK response

- EIA Amendment Regulations 2008/2093 came into force on 1/9/08
- New definition of a “subsequent application” which can trigger EIA – “an application for approval of a matter where the approval – (a) is required by or under a condition to which a planning permission is subject; and (b) must be obtained before all or part of the development permitted by the planning permission may be begun.”

Scope of new Regulations

- Outline planning permissions – approval of reserved matters
- Conditions which require approval of any matter to be obtained before all or part of the development is begun (*Grampian* conditions)
- Note that applications under section 73 and 73A TCPA are applications for planning permission in their own right and subject to EIA as such

Practical considerations and questions

- Is there a potential problem that the original planning application was not subject to EIA when it should have been? If so this will have to be rectified at the second stage
- Has anything changed requiring fresh assessment? Is any updating necessary?
- Is there any possibility that the screening position is different? Should a fresh screening opinion be obtained?
- Does the second application involve relevant new information that was not available at the first stage?

What is the scope of the EIA at second application stage?

- The assessment must be “comprehensive” in respect of aspects not assessed at first stage or which require fresh assessment
- Involves looking carefully at first EIA process to identify the possible gaps
- Note however that judges do not regard EIA as being an “obstacle test”, rather an aid to good decision making. This practical approach needs to be kept in mind.

Other potential problems

- Note also the ongoing question of matters which might be said to be changes or extensions to projects requiring EIA but which fall outside the planning regime
- Example of changes of fuel in cement works: *R (Edwards) v. Environment Agency (2008)* – may not be a material change of use for planning purposes in itself
- Arguably in such cases the necessary environmental permit, or variation to such permit, may be the second stage consent

Changes or extensions to projects

- One further point to be aware of – any amendment or change to development should be considered in terms of its effect on the development as a whole, not in isolation
- See *R (Baker) v. Bath & NE Somerset Council* [2009] EWHC 595, applying *Case C-2/07 Abraham v. Wallone* and *C-142/07 Ecologistas en Accion-Coda*