EIA implications of adding further elements to an EIA development

This article looks at the procedural implications of an applicant being asked to add an off-site highway improvement to a scheme for EIA development for which the planning application and accompanying ES have already been prepared and submitted. The situation could arise with any off-site mitigation works that require planning permission and with a wide range of different projects, although an off-site highway improvement is probably the most likely trigger.

A recent case provides a useful example. An application was made to a Mineral Planning Authority for an extension to an existing quarry, which involved the removal of a minor road. The application included a replacement route and associated traffic management measures, in line with initial consultations with the Highways Authorities. However following submission, the applicant was asked by the Highways Authorities to provide further off-site highway works elsewhere. The further works were improvements to a nearby junction to address the possibility that the traffic management measures might not be fully effective, resulting in a small proportion of diverted traffic using an unsuitable alternative route.

In the normal course of events, the highway improvement would have been permitted development under the PD Regulations 2015 (Schedule 2 Part 9A) because they were works within the confines of the highway, and therefore could have been dealt with via a Grampian condition on the original application, backed up with a clause re funding in a S106 Agreement.

(A Grampian condition is a condition that prohibits the start of development authorised by a planning permission until a specified action has been taken (such as the provision of off-site supporting infrastructure). See further https://www.gov.uk/guidance/use-of-planning-conditions

However, because the works were required as part of an EIA development, the PD rights don’t apply, and the additional off-site highway works themselves became EIA development and therefore needed to be incorporated into the scheme proposals and the accompanying ES.

There are typically 2 ways of doing this depending on the relative location of the works.

- If the site for the additional works is included within the original red line (which may well have been widely drawn to include other elements of the scheme), then this is most simply dealt with via a formal amendment to the original application via Reg 25 (2017 Regs).
- If, as was the case in the example application, the site for the works was not included within the original red line, then a separate planning application is required. The development works will be considered as EIA development, because of its link with the larger scheme, and will therefore need an ES of its own. This ES will need to cross refer to the original ES and be incorporated into it via a Reg 25 submission as well as being presented as a free-standing ES accompanying the separate application.
In so doing, the Reg 25 Report and ES will have to address cumulative/in combination effects.

A possible further complication which applied in the case in point, was that the additional off-site highway improvement was in the adjoining Local Planning Authority area. So, the separate application was submitted to the adjoining authority for determination. At the same time the original ES was amended via a Reg 25 document submitted to the Mineral Planning Authority which set out updates to the original ES text to take account of the off-site works and any effects, including cumulative/in combination effects, and by providing a copy of the separate free-standing ES for the works themselves as an appendix.

The adjoining authority then had 2 options – it could either determine the application itself, or delegate determination of the application to the other authority (under s101 of the Local Government Act 1972).

In our case, the adjacent LPA decided to determine the application itself in consultation with the MPA.

This could have serious implications for the project, because it involves additional expense in preparation of the separate application and ES and could add many months to the approval process, especially if the off site works need supporting ecological assessments which have seasonal survey windows.

At the time of writing, neither of the applications has been determined, but we hope that they will soon!

_Anthea Hoey, Atkins, June 2019_