The introduction of the EIA Regulations 2017 two years ago heralded a new era of greater clarity around cumulative assessment. The change from ‘reasonably foreseeable’ which feels like a term used in a court room drama involving a sequestered jury to ‘other existing and/or approved development’ left little ambiguity in theory.

However, in practice this has proved not to be the case. There remains a level of intrinsic caution on the part of local authorities to ensure that all likely schemes are considered, and the possibility of challenge avoided.

Consequently, it is of vital importance to agree the cumulative schemes with the relevant planning authority, which in theory should settle the issue. Yet recent experience has identified that consultation still doesn’t achieve a resolved position.

Whilst undertaking socio-economic assessments on two independent applications within the Old Kent Road Opportunity Area (OKR OA) located immediately adjacent, it was expected that the cumulative scheme approach would be the same. Particularly as both schemes are residential-led, mixed-use and with concurrent application dates. However, the local authority response from two separate case officers required differing schemes to be considered to the extent that 11 additional cumulative schemes were incorporated into one assessment. This reflected the concern on one scheme that several potential applications were waiting in the wings and would lead to last minute revisions.

This results in a quandary for the consultant, negotiations with the respective case officers did not change either’s positions and understandably, the applicant with fewer schemes specified was not keen to increase this when the direction of the Regulations was towards a more focussed and arguably realistic assessment. Likewise, the case officer for the project with the greater number of cumulative schemes remained firm that this was the most appropriate precautionary approach, to the extent that they clearly stated a request to revisit the entirety of the cumulative assessment post-submission but prior to committee to ensure it was complete.

This raises a regular concern of EIA practitioners of where you draw the line of including new information in the assessment. Post-submission feels like a line in the sand but in this instance, wasn’t enough and the cumulative assessment is being revisited.

This was further complicated by the location of both sites in the OKR OA, which further stretched the concept of approved development, as whilst various sites are within the designated Opportunity Area, the Area Action Plan is still in draft and there remains uncertainty about which sites will come forward, for what uses, and when.

A similar scenario has recently occurred in Kent where the progress of a new draft Local Plan meant that the local authority’s initial response to scoping was a need to include all potential locations submitted as part of the Call for Sites.
In each instance, there is quite rightly an apprehension of challenge and belief that thoroughness is the antidote. Given the change in the Regulations, arguably a better remedy is a more focussed assessment limited to:

- existing schemes that is, the existing baseline, and, consideration of schemes under construction and their respective operational phases;
- those schemes that are approved but not yet started construction; and
- those schemes that are considered highly likely to be going to committee before or at the same time as the application and for which sufficient information is readily available to make an informed assessment.

The latter is an inevitable need to avoid an eleventh-hour request for consideration of an additional scheme that has suddenly been submitted, or to be subject to a Regulation 25 request post-submission.

A greater susceptibility to challenge can only be introduced by attempting to cumulatively consider schemes for which little information is known. ‘Reasonably foreseeable’ may have departed from the EIA vocabulary but ‘likely significant effects’ remains a foundation of assessment. To include more ambiguous cumulative schemes is to distort the nature of likely significant effects and to move further towards disproportionate assessment.

As with everything, the best way to tackle this is continued dialogue with local authorities and the ongoing use of other project examples or case studies to demonstrate how more focussed approaches are arguably more robust.

*Ceara Shields, Senior Consultant, Environmental Planning & Assessment, CBRE Ltd, April 2019.*