AMENDING AN EXISTING PLANNING PERMISSION: TAKING A PROPORTIONATE APPROACH TO ENVIRONMENTAL IMPACT ASSESSMENT REVISIONS

**Abstract**

This article explores the likely considerations of updating an existing Environmental Impact Assessment (EIA) alongside the revision of a planning permission. In particular, it sets out the likely relationship between undertaking a minor material amendment to a development and the consequential impact upon EIA.

**Introduction**

There will often be instances where there is a need to modify approved development proposals after planning permission has been granted. Depending upon the nature of the required modifications, there are a range of planning options for amending a permitted proposal including:

- Application under [section 70 of the Town and Country Planning Act 1990](https://www.legislation.gov.uk/ukpga/1990/44/sched) for instances where the modifications are fundamental
- Application under [section 73 of the Town and Country Planning Act 1990](https://www.legislation.gov.uk/ukpga/1990/44/sched), to undertake a minor material amendment where there is a relevant existing condition that can be varied

The degree to which a modification is fundamental, minor material, or non-material is not clearly defined, and will be dependent on the context of the overarching scheme. An amendment that is non-material in one context may be material in another. However, it is clear that the nature of the amendments will have a consequential impact on the need for and approach to EIA.

**Applying Environmental Impact Assessment Regulations**

A non-material amendment is unlikely to require EIA given that – by definition – the changes sought will be non-material. However, a minor material amendment under section 73 is considered to be a new application for planning permission under the EIA Regulations, and therefore an Environmental Statement (ES) must be submitted if it meets the relevant criteria and thresholds, subject to screening opinion.

**Updating an existing Environmental Impact Assessment - A comprehensive yet proportionate approach**

Updating an existing ES as a result of planning amendments brings to the fore the key issue of balance: meeting the EIA legislative requirements on the one hand whilst efficiently achieving the required planning objectives on the other.

In particular, a minor material amendment is likely to be of a scale or nature that results in a development which is not substantially different from the one which has been approved. Crucially, EIA is an iterative process which should evolve in parallel with designs or redesigns of an application alongside need to progress the assessment in a proportionate and pragmatic way. The following sets out the key considerations in achieving this balance.
Key Considerations

Overarching
Clearly legislative and wider policy changes may have occurred since the original EIA was undertaken and will need to be taken account of. This may include:

- EIA Legislative changes e.g. the need to consider whether human health has been significantly affected by development, as introduced by 2017 EIA Regulations;
- National Planning Policy Framework changes e.g. ensuring opportunities are taken to secure net gains as part of the overarching environmental, social and economic objectives of sustainable development;
- Local Plan modifications and/or adoption that may result in additional new development or environmental requirements.

Data Sources
Where an Environmental Impact Assessment was carried out on an original planning permission, consideration will need to be given as to whether further information needs to be added to the original ES to satisfy the requirements of the Regulations. The ES must include information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

There are likely to be further ‘passage of time’ considerations dependent upon when the initial EIA was undertaken. It may be that the original baseline has evolved as a result of development on site; additional consideration may need to be given to whether data collection techniques and sources have also changed since the original EIA.

The approach taken will need to balance whether it is best to simply update baseline data, or re run the original data collection, with the risk that this may open up new issues in relation to the original consent.

Potential effects and mitigation
If the updated EIA is being undertaken alongside a minor material amendment it would be expected that the original potential effects and required mitigation are likely to be similar to those set out in the original ES. However, the EIA practitioner should be alive to changes to the evolution of impact especially as a result of changes in baseline, or policy requirements. Consideration of additional embedded mitigation measures would effectively demonstrate the evolution of development proposals and the clear iterative impact of EIA on the development.

Cumulative Impact
Dependent on the passage of time, it is likely that there may be additional wider development proposals that should be taken into account as part of the cumulative impact assessment. The inclusion of ‘reasonably foreseeable’ projects such as those likely to be permitted or subject to proposed allocation in an emerging local plan is reasonable. Existing developments are not included in the cumulative effects assessment as these are already included within the baseline conditions and should not be double counted in the cumulative assessment.

Conclusions
EIA is an iterative process that should evolve alongside development alterations. Revising an EIA as a result of material changes to a consented development should be undertaken in a proportionate yet comprehensive manner. Central to this is ensuring compliance with legislative and procedural requirements on the one hand, whilst also proportionately reflecting the nature and purpose of development alterations on the other.

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