Considering Minimum Parameters

The well-established case law from which the ‘Rochdale Envelope’ arises – namely *R. v Rochdale MBC ex parte Milne (No. 1)* and *R. v Rochdale MBC ex parte Tew [1999]* and *R. v Rochdale MBC ex parte Milne (No. 2) [2000]* – sets out the requirements for having clearly defined parameters within the submission for an outline application.

Since this, setting parameters has become an integral part of the EIA process and requires “sufficient information to enable ‘the main’, or the ‘likely significant’ effects on the environment to be assessed... and the mitigation measures to be described” (paragraph 104 of the Milne (No. 2) judgement). The ruling continues by stating that the level of detail of the proposals must be such as to enable a proper assessment of the likely environmental effects and necessary mitigation.

When setting parameters and in order to be able to robustly assess ‘likely significant effects’, maximum parameters should always be set for assessment. However, we are often asked about whether minimum parameters should be given due consideration during the design phase, and whether there was a need or otherwise for setting these parameters as part of an outline application.

We often find that the request from either local authorities or the design team for minimum parameters often arises from confusion between what is required within parameter plans for the purpose of EIA assessment and what should be the focus of the design work which happens alongside the EIA process.

We believe that in most cases it is unnecessary to provide minimum parameters as part of an outline application.

When assessing ‘likely significant effects’ on the environment, minimum heights, footprint, finished floor levels (‘FFLs’) etc. are unlikely to provide relevant information within an assessment. EIA assessment of significant effects is undertaken at a specific point in time, and most impacts will arise from the maximum form of development proposed. As such, including minimum parameters on a scheme are usually neither necessary for assessing significant effects and may enforce undue burden on a developer.

Of course there are exceptions to this; minimum parameters should not always be dismissed as unnecessary instantly, and flexibility should be allowed so that consideration can be given where relevant. There are often cases where minimum parameters can provide key benefits or mitigation to a scheme to reduce any significant impacts. Some examples are provided below.

With regard to assessing against particularly sensitive heritage or landscape/townscape receptors, a key benefit and/or mitigation measure to reduce the significance of an impact could be from the new development providing screening or ‘filling in’ a visual/elevational gap between buildings/other forms of development. In these instances, where a clear benefit can be found, minimum parameters on height should be considered a key consideration in mitigating against significant impacts.

Another example, which is becoming increasingly relevant to the Development Consent Order process, is minimum parameters when related to wind turbine applications. The Planning Inspectorate issued an advice note in April 2012 which detailed requirements under the Rochdale Envelope, and this includes reference to minimum parameters for offshore wind farms.
It advises that whilst parameter plans should allow flexibility, it should not permit such a wide range of materially different options such that each option in itself might constitute a different project for that assessed in an EIA. Additionally, it states that the Rochdale Envelope should not be used as an excuse to provide insufficient information for a scheme.

In the context of wind farms, due to procurement and technological issues, the design of a wind turbine may not be secured until well after permission is granted (or a DCO is issued). Restricting elements of design through minimum parameters, such as minimum distances between turbines and minimum widths of blade tips can thus ensure that development options can be controlled. For example, it can be controlled so that multiple small wind turbines are not brought forward when fewer, larger wind turbines could have been brought forward within the maximum parameters set by the development. In addition, minimum blade tips may be appropriate from an ecological point of view to ensure there are minimal impacts (via increased visibility) on bird species.

As identified above, it is likely that maximum parameters provide sufficient information for an EIA to assess likely significant effects on the environment for any given scheme, without the need for minimum parameters. However, in particular instances, EIA practitioners should be alive to the fact that minimum parameters can help control development and provide key mitigation measures which should be included.

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