Dynamic Data Production – Where to Draw the Line?

Often to expand or alter operational development (e.g. a commercial facility), planning permission will be required. In some circumstances this will also entail a need to undertake an Environmental Impact Assessment in relation to the expansion or alteration. At the same time, the operator may be proactively engaged in the ongoing accrual and publication of environmental data relating to their existing operations to stakeholders as part of existing community relations commitments. In this case, the applicant would continue to accrue and publish this data in advance of, in parallel with, and following the assessment of any planning application.

Regulation 25 of the 2017 EIA Regulations requires that, if the local planning authority considers that further information is required in order to make a reasoned conclusion on the likely significant effects of the development, they must ask the applicant, in writing, to provide it. It also requires that additional information of a substantive nature *submitted voluntarily by an applicant* must be treated in the same way as information required by the local planning authority. All information so submitted must be publicised, consulted on, and a period of 30 days observed following the receipt of such information during which the Local Planning Authority is disempowered from issuing a planning permission.

An applicant’s publication of ongoing information during the determination period has the potential to become enmeshed, in public perception, with the consultation on and responses to the Environmental Statement for the development for which consent is being sought. The information issued therefore has the potential to influence the public response to the development proposals.

The question for the competent expert is therefore: Whether the information being published by the applicant voluntarily in a public forum during the consultation and assessment phases of the planning application process should be regarded as *voluntarily submitted* environmental information and captured by the consultation provisions of Regulation 25?

In practical terms, the dynamic voluntary production and release of this information means that an application risks becoming embroiled in an unending series of updates, re-assessments, revised mitigation strategies and reconsultations, with the LPA being hamstrung from reaching a decision on the likely effects. However, it would appear incorrect to stop a conscientious operator from collecting and publishing environmental data through ongoing monitoring exercises during determination of the application simply in order to avoid confusion with the EIA where the requirement for that information has not been scoped in to the assessment.
It is therefore necessary for the competent expert to consider the relevance and influence of the published information, whether it is material to the assessment of the significance of the environmental effects of the proposed development, and therefore to determine whether or not it should be submitted to the determining authority as a formal update to the ES.

The exclusion from the ES of newly accrued and/or published data potentially relating to the key environmental issues being considered in an ES appears uncomfortable, but is comparable to the adoption of data accrued from external bodies (for example relating to air quality or ecology) informing baseline assessments which is equally likely to be being dynamically produced following production of the ES and during the determination period.

As the basic premise that the purpose of EIA is to provide the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment (regulation 18(4)(b)), this need not be all information.

The competent expert must make carefully balanced judgement about the relevance of the additional information to the assessment of, and the representations of stakeholders to, the proposed development.

Information used specifically to engage with stakeholders in respect of the proposed development must be submitted as, and form part of, the ES and indeed would be scoped in.

However, other environmental information related to the ongoing operation published by the relevant operator and independent of the planning application, and which has not been scoped in to the EIA, and which the competent expert believes is not material to the findings of the EIA, need not be considered as being voluntarily submitted material for EIA purposes as long as:

1. the purpose for the publication of the information is clearly disassociated from the assessment information provided as part of the planning application; and,
2. there is no substantive conflict with the baseline as documented in the ES.

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