## Explaining decision-taking and mitigation measures as part the EIA planning decision-making process - the importance of the EIA Regulations

A High Court decision, made in June 2016, highlights an aspect of the EIA Regulations that should not be overlooked by practitioners.

The case (Butler v East Dorset [2016] EWHC 1527 (Admin)) was the second successful challenge to the development of a solar park by Good Energy at Mapperton in East Dorset. Planning permission had been granted, in accordance with an officer recommendation by committee, in spite of objections and followed the successful high court challenge of an earlier scheme.

The key issues for the challenge were the effect of the development on heritage assets and whether the officer report and advice to members was misleading, in advising that the development was in accordance with the development plan. The challenge was successful on these grounds.

However, the fourth ground of the challenge was the failure to comply with regulation 24(1)(c)(iii) of the EIA Regulations.

Regulation 24 of the EIA Regulations, “Duties to inform the public and the Secretary of State of final decisions”, states:

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<td>i.</td>
<td>the content of the decision and any conditions attached to it;</td>
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<td>ii.</td>
<td>the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;</td>
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<td>iii.</td>
<td>a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and</td>
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<td>iv.</td>
<td>information regarding the right to challenge the validity of the decision and the procedures for doing so.”</td>
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For the Claimant, it was noted that no time limit is prescribed for when such a statement has to be provided but that there must be a reasonable time limit to comply. In this instance they argued that the permission should be quashed as it was not possible to discern the Council’s reasons for granting permission from the material in the case. For the Defendant, it was submitted that, as there is no time limit for the provision of the statement, there had been no breach of the regulation, that the Claimant had been fully involved in the consideration of the application for planning permission and was therefore not prejudiced by the absence of a such a statement.

Rhodri Price Lewis QC (Sitting as a Deputy High Court Judge) noted that this regulation requires a single statement to be provided and that no such statement of reasons had been provided as required.
However, as the judgement held that the other grounds of appeal were successful he considered that there is no purpose in making an order under this ground ‘...as the Council will have a further opportunity to meet the requirements of this Regulation upon its redetermination of the application for planning permission.’.

The need to provide reasons for granting planning permission is no longer a statutory requirement for most decisions, following The Town and Country Planning (Development Management Procedure) (England) Order 2015, which replaced the requirement under Article 22 of the Town and Country Planning (General Development Procedure) Order 1995 (as amended).

The online Planning Practice Guidance does however note that: “While the local planning authority is no longer required to give reasons for approval on decision notices, it is important that the other paperwork that supports such decisions clearly shows how that decision has been reached.” (Paragraph: 020 Reference ID: 21b-020-20140306).

However, the need for the Local Planning Authority to address the requirement of the EIA Regulations is separate and important, particularly as this may be subject to challenge.

How do Councils currently go about informing the public of their decisions on EIA developments? The indication is that this could be by local advertisement, or ‘other means as are reasonable in the circumstances’. What other means are there and what is reasonable? Would advising those who have commented on an EIA planning application of the outcome suffice?

If so, what form should a description of the ‘main measures to avoid, reduce and if possible offset the major adverse effects of the development’ take? It is notable that the wording refers to the ‘major adverse effects’. There may be other mitigation required to make development acceptable or of less than major significance – does this have implications for how the significance of effects should be considered.


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