Implementing the changes to the requests for enhanced Screening Opinions introduced by the 2017 EIA Regulations – 11 months on. The challenges and opportunities in Practice.

This Article focuses on the changes brought into the screening opinion process through the new Regulations. This now places more onus on a scheme to be reasonably progressed with the early mobilisation of consultants to provide technical input and justification, including mitigation measures up-front to reduce the significance of effect and in doing so, screen out the development from any requirement to undertake an EIA.

This Article considers the implications for this in practice 11 months on from its introduction and demonstrates how Spawforths has responded to these obligations.

These changes have presented a number of opportunities and challenges within the industry, both in the public and private sector.

Opportunities

- The changes are aimed at making the screening process more comprehensive.
- The changes should standardise the screening process, including the information required in support of an opinion and improve the consistency in the submission made to the authority.
- “Front-loading” of information should reduce the need for EIA on some “marginal” EIA developments.
- If a consistent and robust approach is applied to the submission of a screening request in the form of a ‘Screening Report’ this should allow the authority to assess the opinion with more uniformity. A more uniform approach should also reduce the threat of legal challenge.
- The screening opinions provided by the Council should be more robust with firm conclusions and identify, where appropriate, mitigation measures to avoid significant adverse effects. The 2017 Regulations should now avoid any complacency with developers and some more relaxed authorities in their assessment process, some of which do not provide clear reasons for their decision.

Challenges

- We have found that in some cases this has brought increased responsibility and pressures on the authority assessing the screening opinion, with some opinions being provided in excess of 3 weeks from the date of request.
- Some authorities now outsource their screening opinions and we have found that this provides a better more structured approach and consistency to their screening opinions.
- Having studied a number of screening opinion requests since May 2017, we have found these all differ significantly and the 2017 Regulations have not seen meaningful changes to screening requests.
- One local authority has reported they have seen a reduction in the number of screening requests and those that they do receive, show no marked change in the quality or level of information submitted.
- Some developers continue to choose not to screen a project relying on the Council to screen this, at the time of the submission of the application.
The 2017 Regulations should be seen as an opportunity to understand where environmental effects could occur and consider appropriate mitigation measures so they are integrated into the scheme evolution at an earlier stage for screening.

Spawforths already adopt a robust and detailed approach to screening, which has been justified by the changes brought in from May 2017.

As a matter of course, Spawforths have undertaken screening requests in parallel with pre-application discussions and only submitted a screening opinion when detailed technical information has been made available from a team of appointed consultants.

Spawforths screening requests includes a full project description, a series of design parameters and supported where required with completed technical reports, with a clear mitigation section in the form of a Screening Report, providing a detailed response in line with the selection criteria set out in Schedule 3 of the Regulations.

We consider that this follows good practice and the use of this Schedule 3 criteria in a tabular form and template provides a consistent and coherent approach, which should be familiar to the Council, given they are expected to assess the site proposals against the same criteria in this schedule.

We have been commended on this comprehensive and detailed approach to screening by legal practitioners. It has also resulted in successful screening out development, where otherwise a full EIA could have been required.

In summary, we consider there are certainly challenges and opportunities presented by the new 2017 EIA Regulation changes, however question marks still remain over whether it makes the process more efficient and effective. It would certainly benefit from more guidance to standardise the approach to screening. Where there are border-line cases, these Regulation changes can be of great benefit, however it is still unclear in how many instances provision of this detailed information and mitigation has resulted in a full EIA not being required.

Spawforths, April 2018.