Implementing Mitigation During Construction

Bobby Clayton from The Environment Partnership (TEP) describes some of the benefits and pitfalls of contractor and applicant-led approaches to implementing mitigation during construction.

Projects that fall under the remit of Environmental Impact Assessment (EIA) development under the various EIA Regulations seek to minimise or remove the potential for adverse environmental effects through the identification of mitigation measures in a number of ways. Typically these are:

- Mitigation by design – measures that have been considered prior to and integrated as an inherent part of the design (such as avoiding environmentally sensitive receptors, minimising height or breaking up of bulky mass in the architectural design of large buildings, choice of building materials and colours).
- Control and management measures – measures to be used during construction typically detailed in a Construction Environmental Management Plan (such as use of wheel washes, road sweepers and construction drainage to manage silt run-off).
- Other mitigation – measures above and beyond those referenced above (such as management of footpath diversions, landscape planting, noise monitoring).

The identification of such mitigation measures will often be clearly set out in the Environmental Statement (ES). Others will typically be referenced in the ES with a commitment for the detail to follow once planning permission (or other primary consents) has been granted; in the case of planning permissions, these are typically secured using planning conditions.

An all too often common perception at the post-consent stage is that EIA has served its purpose and all of the hard work has been done i.e. the assessments have been completed; mitigation identified; and planning permission has been granted - good work all round. This is sometimes exacerbated by the subsequent appointment of contractors whose primary job is to then build what has been consented. Often contractors are heavily geared to and very keen on ‘getting their spades in the ground’, and less geared (and enthusiastic) towards satisfying theirs and the applicant’s consenting and environmental obligations (often in the form of producing and then implementing mitigation documents to satisfy pre-commencement planning conditions). Such processes are sometimes seen by contractors as the ‘necessary evil’ to enable the spades to get into the ground in the first place.

One of the key obstacles in ensuring a smooth process, particularly for large, linear construction projects (such as underground cables or a new road) is the sheer volume of different environmental features and receptors and the associated and often wide-ranging mitigation measures, all often coming into play at different stages over a long construction programme.
Trying to understand and rationalise the more specialised micro details and site-specific mitigation (such as badger licence conditions, noise monitoring locations, invasive species locations and procedures) whilst implementing the more generic measures (such as managing silt run-off, water abstraction) is a tricky proposition, particularly when the responsibility falls to the contractors.

From the applicant’s perspective, one of the main benefits in having a contractor-led approach is that the responsibility to deliver all aspects of the construction can be wrapped up in a single contract and it is easier for the applicant to implement protocols to monitor compliance and effectiveness.

In TEP’s experience, one of the main pitfalls in having a contractor-led approach is that contractors are rarely structured in a manner that allows them to firstly understand the core aspects of the planning and EIA systems and produce all the necessary mitigation documentation, and secondly present them in a clear manner for stakeholders to understand. The use of ‘construction speak’ and typically having expertise with respect to the generic measures rather than the site-specific measures can increase the risk of project delay and reputational harm. Often there is also a preference to undertake a construction approach that is easier and cheaper but not necessarily the best solution for the immediate and surrounding environment. It is for these reasons that, once planning permission has been granted, the applicant typically considers where the responsibility of delivering the mitigation documents, discharging planning conditions and adhering to the ES lies; is it a contractor-led or an applicant-led approach? The main benefit of an applicant-led approach is having more control over mitigation documents and subsequent implementation; this is usually offset to a certain extent by having a more complicated contractual relationship with its contractors.

An increasingly more common solution is a combination of the two. An external environmental and consenting coordinator is a good solution to manage the process of adhering to and implementing mitigation measures directly on behalf of either the contractor, the applicant, or both (acting as a bridge between the two). The close collaboration required with both parties enables the environmental coordinator to remove the majority of the disadvantages associated with a contractor or applicant-led approach. Where aided by an Environmental Clerk of Works providing regular on-site assistance, the risks of non-compliance and works resulting in avoidable harm to the environment can be substantially and effectively reduced.