## EIA screening and permitted development

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter referred to as the GDPO) grants planning permission for certain types of development ('permitted development') under specific classes, subject to various exceptions, limitations and conditions.

The GDPO does not, however, permit development classified as falling under schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (hereafter the EIA Regulations) unless a screening opinion concluding that the scheme is not EIA development has been adopted. In most cases, permitted development clearly is not EIA development (i.e. it is not classified as schedule 1 or 2 development) but occasionally it is necessary to seek a formal screening opinion from the local planning authority (LPA).

When the new EIA Regulations came into force in May 2017 one of the changes introduced to the EIA screening process was the ability to consider mitigation measures that could be put in place to avoid or prevent what might otherwise have been significant adverse effects on the environment.

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<thead>
<tr>
<th>EIA Quality Mark</th>
<th>Article</th>
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<tbody>
<tr>
<td><img src="image1.png" alt="Image" /></td>
<td>EIA screening and permitted development</td>
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<tr>
<td><img src="image2.png" alt="Image" /></td>
<td>Terence O'Rourke Ltd was recently commissioned to undertake an EIA screening for a development which would normally be implemented by a licensed statutory undertaker under the GDPO, subject to specific exemptions.</td>
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<td><img src="image3.png" alt="Image" /></td>
<td>Whilst the proposed permitted development (PD) itself was not specifically referred to in the EIA Regulations, it essentially enabled the operation of a consented schedule 2 development (the planning application for which was accompanied by an environmental statement). It was therefore considered that paragraph 13(b): Any change to or extension of development of description listed in paragraph 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed, was applicable in this instance.</td>
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<td><img src="image4.png" alt="Image" /></td>
<td>The screening request concluded the consented schedule 2 development, as changed by the proposed PD scheme, was not likely to give rise to significant environmental effects and was therefore not EIA development. The LPA informally concurred with this view. However, one of the screening consultation responses requested that commonplace but site-specific mitigation be implemented on a precautionary basis.</td>
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Whilst our client had no concerns in adopting the requested mitigation, this raised an interesting procedural issue:

- If the development was found not to require EIA, it would be considered permitted development and there would be no formal planning mechanism to enforce the requested mitigation.
- If mitigation could not be enforced, it was questionable whether the LPA could robustly conclude that EIA was not required.

We discussed three options with our client:

a) Continue to pursue an EIA screening opinion
b) Withdraw the screening request, then submit a planning application for the scheme to enable the mitigation to be conditioned
c) Put in place a legal agreement to provide a commitment to the mitigation, prior to the determination of the EIA screening request

Option a) was felt to be a high-risk strategy, which was not in the best interests of either our client or the LPA. If the LPA required EIA, there would be significant additional costs and delay in respect of preparing and determining an EIA planning application. The EIA would be undertaken on a single issue and would conclude, once the mitigation was implemented, there would be no significant effects.

However, if the LPA did not require EIA, the screening opinion could be open to challenge as there would be no way of ensuring that the mitigation (which the consultee felt necessary to ensure no significant effect would occur) was implemented.

Option b), whilst essentially a straightforward process, would again attract an element of delay (preparation and determination of the application) for what was essentially agreed to be permitted development.

In option c), with a legal agreement in place committing to the mitigation, the LPA would be able to issue a robust screening opinion confirming that the proposal was not EIA development. The proposal could therefore be implemented as permitted development.

Our good working relationship with the planning officer facilitated early discussions on how to proceed with the EIA screening opinion in this unusual situation. Both the LPA and client confirmed a preference to proceed via a legal agreement.

Jo Baker, Associate Director, Terence O’Rourke Ltd, April 2019.

References:
1 Regulation 6(3)(d)