When it comes to complex EIA issues, it can be challenging to steer an appropriate course that protects the developer from unreasonable requirements

The Reeves Hill wind farm scheme, located to the east of Knighton near to the Shropshire Hills, achieved consent in 2012 after 4 years in the planning system following a series of challenges and high court actions. But that was just the start of the difficulties …

The wind farm was deemed EIA development under the established criteria in Schedules 2 and 3 of the 1999 Regulations but whilst the wind turbines and associated infrastructure were deemed initially acceptable following scrutiny of the ES and SEI, the access arrangements to the site were not. As such an alternative access arrangement was sought, which was then subject to a separate planning application to a neighbouring planning authority.

The neighbouring authority was requested to screen the access track, and they subsequently determined that it was not EIA development. Accordingly, a planning application comprising an Environmental Report was prepared and submitted, but this stalled in the planning process owing to a Regulation 19 request on the wind farm, which had been approved by committee but a Decision Notice had not yet been issued. Once the Regulation 19 was suitably addressed through a further SEI submission, and a Decision Notice for approval of the wind farm had been issued, the access track application was reinvigorated; however, following a legal audit of planning documentation by a Barrister on behalf of the applicant, a further screening request was submitted on the basis of the legal inadequacies of the original Screening Opinion, which had been deemed challengeable.

Given the history of the projects by that time, it was highly likely that the unlawful nature of the original Screen Opinion would be picked up by the opponents to the scheme and would revert to yet another legal review.

Following submission of the further request for a lawful screening opinion, the local authority this time deferred the screening decision to the Welsh Ministers, who in turn reversed the previous opinion and determined that that access track was EIA development after all. This was on the basis that there was considered to be a close interdependency between the access road and the wind farm and that, because of this, the access track scheme involved should be considered cumulatively with the consented wind farm. Regrettably the Direction relied solely upon the opinion of a statutory undertaker in respect of a heritage feature, without having investigated the potential claims of effects to a historic feature independently and without visiting the respective development sites.

Considerable debate ensued as to whether the principal was appropriate: should the access track be deemed EIA development solely on the basis of its association with the wind farm EIA development, particularly given that, in the applicant’s opinion, there would be no cumulative or in-combination effects from the two discrete elements of the development on the said historic feature.

A request to reverse the decision was made by the applicant on the grounds that there would be no cumulative effects to the historic feature arising from the wind farm and the access track.
However, the Ministers, responding through reference to guidelines issued by the European Commission, explained that the guidelines advised that because the track proposed is solely to provide access to the wind farm and for no other reason, the appropriate ‘project’ to be considered for assessment under the EIA Regulations is the wind farm and the access road together. The Ministers further explained that the principal question was whether there was sufficient information available to enable an assessment of the likely environmental effects of the project on the environment to be made by the local authority, and the conclusion was that there was not and that therefore EIA was required.

All this could have been avoided by a simple request by the local authority or the Welsh Ministers for further information in this respect, and a site visit to determination the relationship between the two developments and their potential inter-relationship on environmental impacts. The combination of cumulative modelling of the Zones of Theoretical Visibility for both developments along with a site visit would have established no potential for cumulative effects, leading one would hope for a sensible decision discounting the requirement for an EIA on the access track.

At the time of writing the access track application has still not been determined, and meantime the period of the planning permission for the wind farm nears its expiration date ...

Dulas, March 2015.

For access to more EIA articles, case studies and hundreds of non-technical summaries of Environmental Statements visit: www.iema.net/gmark