Relaxation of planning applications rules

Experts from LDA Design examine recent changes to the planning system in England and its impacts on environmental impact assessment (EIA) practice

There have been major reforms to the planning system over the past couple of years. These changes have been driven by the government’s intention to simplify the planning system in support of economic growth and to encourage sustainable development. Of particular note are the changes to the Town and Country Planning (Development Management Procedure) (England) Order 2010.

Review of changes
The amendment to the Town and Country Planning (Development Management Procedure) Order made changes to the procedural requirements for submitting planning applications. The main purpose of this amendment is to relax the submission requirements for an outline planning application. It specifically amends Article 4 of the 2010 Order which stipulates that where layout is a reserved matter, the outline application must state the approximate location of buildings, routes and open spaces, and where scale is a reserved matter the outline application must state the upper and lower limit for the height, width and length of each building. The latest amendment removes the requirement to provide these details at outline stage where layout and scale have been reserved.

Impact on EIA
The level of detail which needs to be provided in an environmental statement has been tested in the courts, in particular, the cases of R v Rochdale MBC ex parte Tew [1999 3PLR 74] and R v Rochdale MBC ex parte Milne [2001 81PCR 27].

Changing EIA practice?
An illustrative masterplan, as the name suggests, for illustrative purposes only and therefore the EIA can only be based upon the project description provided. While a project description can be very detailed, can a robust assessment of effects be undertaken without any parameter plans?

The ex parte Tew is most relevant in this case. The outline planning application was supported by a masterplan and a description of the development. In the application it was noted that the masterplan had been prepared for illustrative purposes only, consequently there was no requirement for the development to be built in accordance with the masterplan.

The court determined that the description of the scheme was not sufficient to enable the main effects of the scheme to be properly assessed. Following these two cases, the concept of the “Rochdale Envelope” emerged.

The latest amendment to the 2010 Order appears to contradict the Rochdale Envelope approach, whereby a developer may feel it only necessary to provide a masterplan for illustrative purposes only and a plan which provides details of access. However, this approach is very similar to the approach taken in the Rochdale case and there is therefore a risk that similar legal challenges might emerge.

There is potential further risk as the EIA will assess the worst case scenario based on the more limited information available. This is likely to mean that the opportunity for mitigation by design will not be fully realised. There are likely to be a greater number of adverse significant effects as a result of the higher level of uncertainty, which could potentially increase the risk of the outline planning application being refused.
It may be possible to sufficiently describe the physical elements that comprise a proposed scheme, but trying to describe the geographical distribution of the proposed scheme without a supporting parameter plan would become extremely complex and long winded.

This allows for greater misinterpretation of the project description which could lead to uncertainty on the scheme and, potentially, to a flawed assessment of effects which could be challenged at a later date. New case law will emerge over time as contradictory elements of the regulations are worked through. In the meantime what advice should EIA coordinators give to developers? LDA Design would strongly argue that EIA should continue to be based on parameter plans where details of building footprints and heights can be critical to the assessment and determination of applications.

Such an approach will allow greater opportunities to incorporate mitigation by design, provide more robust assessments and reduce the risk of legal challenge or non-validation and, as a consequence, lower the risk of delays to the programme and additional costs.

**The role of the EIA coordinator**

The latest amendment to the 2010 Order means that it will become even more important to ensure that an effective EIA coordinator is engaged as early as possible within a project.

As identified in IEMA's report, *The state of EIA practice in the UK*, an effective EIA coordinator needs to manage down the risks of delivery. The amendment will increase the emphasis of this role and it may be the case that to ensure delivery and protect the interests of clients "less is not necessarily best" nor indeed advisable.

*Robert Pile, LDA Design, September 2013.*