The Rochdale Envelope Approach and the Role of EIA coordinators

The desire for developers to obtain flexible planning permissions is understandable and often necessary for the viability of schemes. It has led to outline planning consent being sought for maximum and minimum parameters of development in the form of plans and text. This is often accompanied by an illustrative master plan which indicates one way in which a development can be built out to demonstrate feasibility.

EIA is a mechanism for decision making and must capture all likely significant environmental effects of development, but the use of design parameters presents a particular challenge to this. Although an illustrative master plan provides a defined scheme, assessment of its detail in an EIA could result in under-reporting of effects if the scheme is built out differently. This is a situation which case law has sort to rectify, specifically the cases of R v Rochdale MBC ex parte Tew (1999) and R v Rochdale MBC ex parte Milne (2001).

In ex parte Tew, the authority consented a scheme with an EIA which assessed an illustrative master plan. The Court upheld a challenge to the decision and quashed the planning permission, the description of the scheme was not considered sufficient to enable the main effects of the scheme to be properly assessed, in breach of Schedule 4 of the EIA Regulations.

In ex parte Milne, the outline permission was restricted so that development could take place only within parameters assessed in the ES. The Court upheld the authority's decision to grant planning permission. The judge emphasised that permissions must be granted in the full knowledge of the likely significant effects on the environment.

This does not mean that developers do not have flexibility in developing a scheme but that such flexibility has to be properly assessed and taken into account prior to granting outline planning permission.

In other words, assessing parameters is acceptable, and often necessary, but the EIA must assess the significant likely effects resulting from the flexibility of the parameters. This is the approach known as the ‘Rochdale Envelope’.

So how do we establish the ‘likely’ effects of a flexible scheme?

Although the responsibility for the initial development of parameters often rests with developers and master planners, EIA coordinators have a fundamental role to play in ensuring an EIA robustly applies the Rochdale Envelope approach for outline planning applications where appropriate. EIA coordinators should assist developers and master planners to develop parameters that are not so flexible that the likely effects of the scheme cannot be established or so wide as to effectively represent more than one scheme.

EIA coordinators have sometimes interpreted the requirement to assess likely significant effects as authorisation not to assess the ‘worst case’. However, the Rochdale Envelope approach is consistent with the idea that maximum adverse effects, if permitted through consent of parameters, need to be established and captured in the assessment. If parameters do not rule out certain permutations of development, then they should be considered. Otherwise the EIA is open to challenge.
This is not to say that ‘impossible’ scenarios should be assessed (e.g. development exceeding the maximum floor space available) but these should be ruled out within the parameters. For example, for a mixed use scheme, provision of an overall maximum development quantum allows individual discipline assessors to adjust the balance of the quantum for different land uses within the overall cap if the parameters allow for different scenarios. This is applicable for disciplines such as transport, noise, waste and energy – where the balance of different land use scenarios for each discipline will result in maximum adverse effects.

EIA coordinators must assist in ensuring the team understands the nature of the parameters and capture maximum adverse effects in assessments. This may be applicable at several snapshots through time as the development is constructed, as well as different permutations of the finalised scheme if the parameters allow for this level of flexibility. Several scenarios may need to be assessed to establish the maximum adverse effects and therefore more flexible schemes will generally take more time to assess.

However, EIA coordinators can help to design out any adverse effects that may arise from initial review of parameters, reducing the need to fully assess multiple scenarios. If significant adverse effects are likely to result following development of the scheme in a certain permutation, this should be communicated to the design team early in the process and the parameters narrowed to rule it out if possible.

The importance of mitigation by design through this iterative design process is not a new concept but Rochdale cases have emphasised a legal basis for EIA team to be fully involved with design of the development parameters right from the beginning.

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