**Additional environmental information - what is it and what are the obligations to publicise its availability?**

| The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) include provisions to ensure that the minimum information required to be provided is included in an Environmental Statement (ES). If a planning authority (or the Planning Inspectorate) considers that all of the information required by Schedule 4 is not provided in an ES, it is required to request additional environmental information from the applicant. As defined in the EIA Regulations, the term “environmental information” means the environmental statement, including any further information and any other information; “further information” covers additional information that is requested by a planning authority (or the Planning Inspectorate); “any other information” covers substantive information relating to the EIA that is provided voluntarily by an applicant or an appellant in order to satisfy the requirements of Schedule 4 to the EIA Regulations. For example, during the determination period for an EIA development proposal, the applicant may acquire more data which has a material influence on the assessment of effects such as the results of seasonal studies completed after submission of the ES. The planning authority (the recipient) is required by the 2011 EIA Regulations to publicise further information or any other information by publishing a notice in a local newspaper. Regulation 22(3) provides the details to be included in the advert. For EIA development applications in Scotland, similar publicity requirements are in place. However, in Wales, where the 1999 EIA Regulations remain in force, currently there is no obligation placed on a planning authority to publicise anything other than further information. |
| If the applicant submits additional environmental information voluntarily, it is regarded as good practice for the applicant to publicise the availability of such information (following the approach set out in the applicable Development Management Procedure Order as appropriate). But how is information classified when it is provided as clarification of information already submitted in the ES? It is normal for planning officers and consultees to ask questions, or raise queries on aspects of a project during consideration of a planning application. Is additional environmental information provided voluntarily by the applicant in answer to consultation responses regarded as substantive information relating to the ES? This question was addressed clearly in *R (Mr William Corbett) v Cornwall Council* [2013] EWHC 3958. As part of a claim for judicial review of a decision by Cornwall Council, the Claimant contended that information received by the Council, such as correspondence between the applicant and third parties, studies provided to address particular concerns raised by advisors to the Council, and information generated by the Council itself, must be subject of a notice published in a local newspaper. In this case the judgement of the Court found that, “any other information” as defined in the EIA Regulations, does not include comments or responses made by the applicant in response to representations made by third parties or Council officers, nor does it include documents submitted by third parties or those generated by the Council. There is an obligation on the Council to provide access to such information to the public upon request (Environmental Information Regulations 2004), but under the EIA Regulations there is no requirement for an additional public notice to advertise its availability after the publication of the original notice. |
Whether planning policy constitutes substantive information when submitted voluntarily was considered in R (Bishop’s Stortford Civic Federation) v East Hertfordshire District Council [2014] EWHC 348. In this case, the submitted ES included a planning policy section, for which an ES addendum was subsequently submitted to record changes resulting from the publication of the National Planning Policy Framework (NPPF). This addendum was not publicised by the Council and this fact was subject of a challenge to the planning consent. However, the Court held that the submission of an ES addendum because of the adoption of the NPPF was not substantive information and therefore there had not been a technical breach of the EIA Regulations.

Should it be necessary to advertise the availability of additional environmental information prior to determination of the planning application, it is essential to consider when the newspaper advert should be published. The earliest date that a decision can lawfully be made is a minimum of 21 days after the advert to notify the public, and not sooner than 14 days after the new information was sent to all persons that previously were sent copies of the ES (EIA Regulation 22(7)).

An important role of an EIA coordinator is to confirm that the original public notice has been carried out properly, and if not, to ensure that the planning application and ES is re-advertised correctly. Savills has identified examples where planning authorities have advertised EIA development applications in the local newspaper by adding it to the ‘standard’ list of planning applications received. However, using this approach can fail to notify members of the public that an ES is available to view.

Peter Traves, Savills, April 2015.