## EIA Quality Mark Case Study

### Key Issues –
It was initially anticipated that three planning applications would be submitted concurrently, collectively covering the North West Quadrant (NWQ) site, and an ES, encompassing all of the proposed applications, would be submitted voluntarily. This strategy was proposed in a request for a scoping opinion submitted to Plymouth City Council (PCC) in June 2016. However, due to delays in the development of elements of the site-wide masterplan and the requirement to bring forward other elements more urgently, the decision was subsequently made to submit the planning applications in sequence. The first two applications, which were more limited in scale, would be supported by EIA screening requests. The final application would be supported by an ES, which would assess the cumulative impacts of all of the applications in combination with one another.

In their response to the request for a screening opinion submitted in relation to the first application (the MSCP application), PPC stated their concern that the proposals were part of a wider project, which the applicant had independently agreed is EIA development (through the voluntary submission of a scoping report). In the response, PCC referenced the following statement from the NPPG:

> "An application should not be considered in isolation if, in reality, it is an integral part of a more substantial development (Judgment in the case of R v Swale BC ex parte RSPB [1991] 1PLR 6). In such cases, the need for Environmental Impact Assessment must be considered in the context of the whole development. In other cases, it is appropriate to establish whether each of the proposed developments could proceed independently (Candlish [2005] EWHC 1539; Baker [2009] EWHC 595)."

Given that the proposed new MSCP is needed to enable the removal of existing surface level car parking, which will facilitate the phased delivery of the later elements of the wider NWQ masterplan, PCC argued that the MSCP application and the other elements of the wider masterplan, were ‘functionally interdependent’ and, as such, may be considered together to be ‘the whole development’. Despite acknowledging that the applicant’s ultimate intention was not to circumvent the requirements of the EIA Regulations, given the interconnectedness of the applications, PCC stated that they could not screen the current proposals as not requiring EIA until the applicant could provide evidence that the proposed approach was valid.

### Description of the project
The NWQ site is a previously developed area of approximately 6.1 hectares, located in Derriford, 3 miles to the north east of Plymouth City Centre. The area previously supported medical residences and other healthcare related buildings - which have since been demolished - associated with Derriford Hospital, located to the immediate south-east of the site. A planning application, supported by a request for a screening opinion, was submitted to PCC in relation to the first phase of the redevelopment of the NWQ area in December 2016 (“the MSCP application”). The proposals comprised erection of a new Multi-Storey Car Park (MSCP) and a new office building, alongside retail floorspace and access and landscaping works. The site-wide masterplan, which is still being developed, will comprise a mix of healthcare, residential and commercial uses across the wider NWQ area. In due course, as the designs are developed, planning applications will be submitted for other elements of the NWQ area.

### Purpose of the project
The proposed office building was required to relocate staff currently accommodated in existing buildings associated with Derriford Hospital. The proposed new MSCP was needed to enable the removal of existing surface level car parking areas, releasing this land to allow for the phased delivery of the remainder of the NWQ masterplan. The ambition for the site-wide NWQ masterplan is to comprehensively regenerate this important strategic development opportunity and to make a substantial contribution towards the Council’s aspiration to create ‘A New Heart’ for the area.
Lessons learnt
CBRE prepared a letter of response addressing each of the points raised by PCC. The arguments presented in the response drew on previous case law, including three key cases. The fundamental arguments put forward by CBRE are described below.

**Candlish v SSCLG [2005] EWHC 1539**
This case considered an application for a spine road, which was to be followed by an application for residential development. The argument advanced by the claimant was that the spine road had no function without the subsequent development and, as such, the applications should have been considered as a single development for the purposes of EIA. In his ruling, the judge noted that, since the EIA Regulations are geared to the actual application for development consent, even though there was a very strong factual pointer that there was a wider project in contemplation, there was no legal reason why the application should not be self-standing for the purposes of EIA. This judgement essentially confirmed that, where an application relates to a small project below the relevant screening thresholds in Schedule 2 of the Regulations, the fact that, at some time in the future, the small project could form part of a larger project does not mean that the cumulative effects of the larger project have to be considered in the current application. The assessment of whether or not an application should be subject to EIA should therefore be decided by reference to the application for development consent applied for and not any development contemplated beyond that. This was the approach that was taken with the MSCP application.

**R (Burridge) v Breckland District Council and Greenshoots Energy Ltd [2013] EWCA Civ 228**
This case was concerned with two applications being determined at the same time: one application for a biomass renewable energy plant and another for a combined heat and power plant proposed approximately 1km from one other. The two schemes were physically linked by a pipe required to carry fuel between the sites. In the case, it was held that given that the two schemes were considered ‘functionally interdependent’, they should be treated as a single project for the purposes of EIA. CBRE argued that, by definition, interdependence requires two things to be mutually reliant on one another and this situation does not apply in respect of the MSCP application. Although the MSCP application will help facilitate other elements of the wider masterplan, delivery of this first phase is required to meet the needs of the existing hospital and is not dependent on the rest of the NWQ site being developed.

Lessons learnt cont. –
**R. (on the application of Save Britain’s Heritage) v SSCLG [2013] EWHC 2268**
This case comprised a challenge to the decision of the Secretary of State that EIA was not required for the demolition of a Victorian chapel. It was argued that it should have been considered as part of later wider phases of demolition and redevelopment. In his ruling, the judge noted that the application to demolish the Chapel would have been made irrespective of possible future development, as it was derelict and represented a hazard. He also noted that it was relevant and admissible to look at evidence of the intention of the developer. Given that the proposed demolition of the Chapel had been subject to a screening direction, as would future phases, it was the judge’s view that the developers intention was not to avoid the application of EIA requirements.

Again, this judgement is relevant to the MSCP application. Notwithstanding the fact that the current scheme would take place regardless of what may happen on other land at the NWQ in the future, a screening request was submitted alongside the application and an EIA will be undertaken voluntarily for the later planning application. As such, it is clear that the intention of the developer was never, at any time, to try to avoid application of the EIA requirements.

**Lessons learnt:**
In future, for other such schemes where questions could potentially be raised about whether the application is part of a wider development (in which case, EIA should be undertaken in regards to the whole development), CBRE will look to pre-empt any conflict with the competent authority by clearly illustrating in the request for a screening opinion the following:

- The application and forthcoming applications are not ‘functionally interdependent’, i.e. delivery of the first scheme is not dependent on delivery of the later scheme(s); and
- The intention of the developer was never, at any time, to try to avoid application of the EIA requirements.

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