The importance of the EIA Co-ordinator in screening

| The new environmental impact assessment Directive requires EIA to be prepared by ‘competent experts’. For those in the private sector this will largely be a continuum of the status quo with the added benefit of pushing out the final few who still operate well below best industry standards. For the EIA examiner i.e. the planning authority the bar is somewhat lower whereby the Directive requires ‘sufficient expertise’. There is already, as those working in the industry will be well aware, a wide gulf in ‘sufficient’ expertise between planning authorities. The EIA co-ordinator has long battled to gain its status within the industry albeit there is now a fairly wide consensus regarding our merits on complex EIA schemes particularly with regard to Environmental Statements. It should, however, be acknowledged that an EIA consultant’s knowledge goes beyond ES compilation and we are often an important resource at the screening stage. DHA were recently appointed to co-ordinate an EIA for a primarily residential led scheme in Kent. A screening request to the Council had been made by a third party planning consultant prior to DHA’s involvement. The site in question has an extant planning permission on part of the site relating to the infilling of a former gravel and sand quarry and its subsequent landscape restoration. The forthcoming application for the site relates to residential development of the site and ancillary works to listed buildings. The Screening Opinion issued by the Council concluded as is their prerogative that the proposals constituted EIA development and that any forthcoming application would be required to be supported by an Environmental Statement. This was not an unexpected outcome given the relative sensitivities on the site. The Council had, however, made a fundamental error in procedure, taking the latter application to be a ‘subsequent application’ to the quarry consent within the meaning of the EIA Regulations. Thereby the reasons for requiring an EIA listed: ‘This proposal is considered to be a subsequent application where environmental information has been provided. An EIA is therefore required to comply with Part 3, Regulation 8 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.’ The Council were therefore essentially requesting further information via Regulation 22 for a scheme that was not a subsequent application by definition of the EIA Regulations: “subsequent applications” means an application for approval of a matter where the approval – (a) is required by or under condition to which a planning permission is subject; and (b) must be obtained before all or part of the development permitted by the planning permission may be begun.
Upon review of the Screening Opinion the applicant was advised of the error. The Council were alerted to the error to highlight both the risk to the applicant and the Council of a potential JR challenge. The Screening Opinion was reviewed by the Council and the error subsequently addressed.

Whether a successful challenge to any subsequent permission would have resulted in the event of JR is left to speculation, but on a controversial scheme, with active local opposition groups no one would advise a client to pursue at this risk.

The key message of this experience is not to point blame at the either the planning consultants involved who missed the error or the Council but to highlight the value of the EIA Co-ordinator and their competence in EIA matters.

For those of us with a working knowledge of EIA case law, it is common knowledge that screening is perhaps the most fertile of areas for challenge and yet it receives far less by way of comparative status to the ES. The EIA Quality Mark itself provides no formal assessment of screening competence.

EIA Co-ordinators should be utilised to advise planners on screening matters and review Council procedures to reduce overall planning risk to an applicant.

The new EIA Directive and the recognition of the need for ‘competence’ should therefore be an opportunity to highlight the value of the EIA coordinator throughout the EIA screening, scoping and ES co-ordination process in its entirety. For struggling local authorities there may well be a business case for consultancies offering EIA competence to promote a referral service where this does not present a conflict of interest.


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