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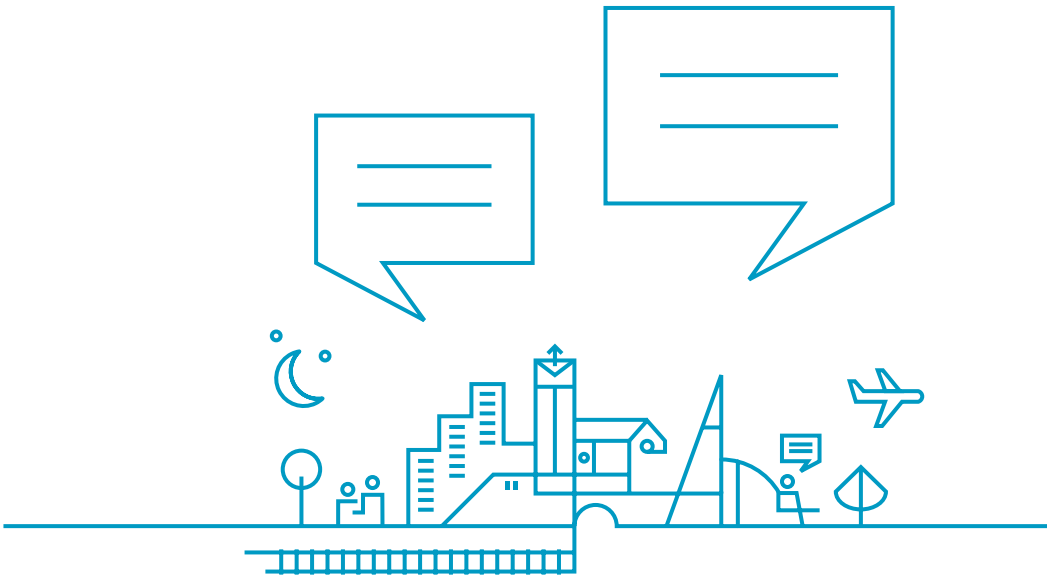
Perspectives on flexibility in EIA

Thought pieces from UK practice



Guest Editor
Clare Richmond

GUEST EDITORIAL

Clare Richmond
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Perspectives on flexibility in EIA

I'm very pleased to bring you Volume 5 of the Impact Assessment Outlook Journal, which brings together a selection of thought pieces on flexibility in EIA throughout the development process, from initial project conception and beyond. In the London Borough of Tower Hamlets (LBTH), we see the full range of flexible permissions sought for EIA Development, from outline planning applications, subsequent reserved matters to minor material amendments and non-material amendments. All of which are covered within existing quality mark articles, and I hope you find them to be a good reminder of some of the technicalities associated with flexibility, in EIA and planning more generally.

Flexibility in EIA can start at the original conception of the EIA Development. In Lauren's experience, delivering flexibility resulted in the examination of 8 assessment scenarios in the Environmental Statement (ES), to ensure the likely significant effects of the outline parameters were identified for all eventualities within any given planning permission.

Once an EIA application has been submitted, often this is not the end of the EIA consultants' involvement, as the EIA Development proposed may continue to change and evolve due to scope creep or hopefully more often in response to consultation responses. Jonathon identifies when an ES Addendum may be appropriate, such as to address issues or changes through the planning application and ES examination. As Nathan duly notes, at some stage the changes will no longer be acceptable as part of the existing planning application, therefore requiring a new planning application and ES.

Section 73 applications[1] (also referred to as minor material amendments), if granted, provide a new amended planning permission that encompasses the original development and the changes sought by the section 73 application. The original permission remains unaffected. Planning Practice Guidance 2014[2] makes clear that an ES must be submitted with a section 73 application which in totality (the original development plus the section 73 changes) is EIA Development, regardless of whether any changes to an original ES are required. Given this clarity, readers may be surprised that many Applicants, in LBTH at least, try to screen the proposed changes in the section 73 independently of the wider EIA Development, in an attempt to avoid the EIA Regulations.

Elizabeth clearly details the requirement to submit an ES, as well as the other intricacies with section 73 applications, such as to what extent changes to the original ES are required. In this same light, Ruth explores section 96a applications[3] (also referred to as non-material amendments) and highlights that changes to EIA Development cannot always be sought within a section 73 applications, therefore requiring a fresh new application for planning permission. Both are particularly useful articles, especially those not familiar with section 73 and section 96a applications.

Section 73 and section 96a applications and the limits of changes to Proposed Developments under these applications, is certainly a topic of the moment. Finney v Welsh Minister & Ors (2019)[4] case law was published on the 5th November and is clear that section 73 applications cannot be used to make any changes to the description of the Proposed Development, a practice which until now has been prevalent. As a result, it may be that flexibility to extant planning permissions are somewhat reduced moving forward, at least against what practice previously was. In the coming months there will likely be further discussion and assessment by lawyers on the implications of this judgement that will shape how this matter is dealt with moving forward, or perhaps further case law, or judicial reviews. Both Elizabeth's and Ruth's articles are still applicable and informative on the subject, but it'll be worth reading them in alongside the Finney v Welsh Minister & Ors (2019) judgement.

Being an EIA Development in LBTH and given the theme of my IA Journal, BDPs article on Wood Wharf had to be in my selection. Wood Wharf is a large outline planning permission in Canary Wharf that has been ongoing since the outline planning application was submitted back in 2013. This article highlights that, as further design details are known these must be reviewed to ensure all likely significant effects are known at the time of determining Reserved Matter applications, referred to as subsequent applications within the EIA Regulations. It also raises an interesting issue with regards to section 96a applications, whereby the conclusions of the ES by definition are unlikely to be affected by the changes allowed through these applications[5]. However, the Statement of Conformity approach employed by BDP can confirm that all likely significant effects have been assessed, appropriate mitigation secured, and that the changes sought are indeed non-material.

To finish off, Richard's article is a reminder that whilst there are mechanisms to amend extant planning permissions to some extent, the most reliable approach is ensuring the original planning permission is fit for the intended purpose and future proof as far as possible.

1. www.legislation.gov.uk/ukpga/1990/8/section/73 Accessed 2 November 2019
2. www.gov.uk/guidance/flexible-options-for-planning-permissions#make-minor-material-amendments Accessed 2 November 2019
3. www.legislation.gov.uk/ukpga/1990/8/section/96A Accessed 2 November 2019
4. www.bailii.org/ew/cases/EWCA/Civ/2019/1868.html Accessed 15 November
5. assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574864/Annex_A_summary_comparison_table.pdf Accessed 2 November 2019

Lauren Tinker

Associate Director, Terence O'Rourke Ltd

Setting EIA parameters – allowing flexibility for the future?

Terence O'Rourke Ltd has found over the past few years that the issue of setting parameters for EIA is becoming more complex. In the immediate aftermath of the Rochdale judgement, setting EIA parameters for outline planning applications became a reasonably straightforward affair. It was generally understood that a series of issues, typically including land uses (e.g. maximum numbers of units, floorspaces, areas, distribution across the site), maximum building heights, densities, access and movement and landscaping, would be fixed through plans and text to enable the EIA to be undertaken. This allowed a degree of flexibility to be retained in how the site would be developed, while providing local authorities with sufficient certainty that the environmental impacts of the development had been fully assessed.

The tying of assessments to a series of parameters is a fundamental cornerstone of the EIA process. However, recent experience suggests that more flexibility is required than is allowed by the standard use of parameters. Changes to the description of development or the masterplan during determination often require an addendum to be produced to the submitted ES setting out how the proposed changes affect the conclusions of the original ES, with associated consultation requirements and potential for delay.

It is not uncommon for medium to large scale development schemes to be built out over 10 years or more. This gives ample opportunity for changes in circumstances, policy and local requirements to mean that the development originally consented no longer meets the needs of the council and/or the developer. Where a development is tied to prescriptive parameters, this can mean that a section 73 application may be required to vary one or more planning conditions, or a new application is needed.

This naturally entails significant additional work, costs and delay to a project that may already be in the process of being built-out, including the need for a new or updated EIA to support the application. We experienced this issue on a project in Bicester, where a new ES was required to support an application for 100 dwellings beyond the maximum number consented and considered in the first ES, although none of the original parameter plans needed to be altered. The new EIA was complicated by the fact that the consented development was already partially built-out, meaning the baseline environments and impacts of the proposals needed to be carefully defined.

In order to avoid these issues, it is becoming more common for developers to require greater flexibility when setting parameters. The aim is to allow the development to adapt to changing needs and circumstances as it is brought forward, while still enabling a robust assessment. This approach removes the need to revise or revisit an ES for what could be a relatively minor change to the proposed development. However, in order to ensure the EIA examines all the potential significant environmental effects of the development, a range of assessment scenarios need to be considered. Care is needed to ensure that the ES does not become unnecessarily long, complicated or confusing, and it can be particularly tricky to explain the use of various assessment scenarios clearly and succinctly in the NTS. It is important that the council understands fully what is being proposed and how the significant environmental effects may vary between scenarios.

We recently undertook an EIA for a mixed use development in Bury St Edmunds where the need for flexibility meant that eight assessment scenarios needed to be examined, relating to variations in the number of dwellings, provision of a school and access arrangements.

Key elements of the process were clear parameter plans and descriptions of the proposals, a detailed explanation of the various scenarios in the methodology chapter, and ensuring that all the ES chapters and technical reports explained clearly the significant environmental effects of each scenario and, where appropriate, why it was not necessary to assess every scenario in detail. Given the complexity of the assessment, it was important that the ES was subject to a rigorous legal review.

It is not possible to guarantee that this approach will avoid the need for revisions to an ES or subsequent new applications. New variations may arise in the future that were not considered at the original application stage. However, the use of more open descriptions of development and variable parameter plans, coupled with the clear definition of assessment scenarios for the EIA, provides one way to satisfy the requirements of the EIA process while allowing greater flexibility to meet the challenges of evolving development requirements.

...the need for flexibility meant that eight assessment scenarios needed to be examined...

Jonathon Turner

Planning Consultant, Deloitte Real Estate

Originally published online - April 2019

Deloitte. Real Estate

Environmental Statement Addendums: A Proportionate Approach

Even in the context of best practice – and strict adherence to the Regulations[1] – in the preparation of Environmental Statements (ES), there are sometimes unavoidable scenarios where it is necessary to prepare an ES Addendum (ESA)[2]. The most common scenarios are perhaps where:

1. The relevant Planning Authority, Secretary of State or Inspector is of the opinion that the submitted ES should contain additional information in order for it to be considered a robust assessment of environmental effects (Regulation 25); or
2. An applicant makes the decision to submit further information, often arising where amendments to the scheme have been made during the (sometimes prolonged) determination period of a planning application, or alternatively where an application under s73 of the Town & Country Planning Act has been submitted to amend an approved scheme.

While the EIA Regulations states when an ESA may be required[3], they do not specify a required format.

The contents of an ESA will principally be determined by the extent to which the original development proposals have changed. In the same way, the format that an ESA will take, should be appropriate and proportionate to the level of changes since the original ES was submitted.

The key issues to consider when determining the appropriate format, and depth, of an ESA will include:

- Baseline data: is it still valid?
- Significance of changes: is re-assessment required?
- Scope: is the original assessment scope still valid/robust?
- Cumulative schemes: does further work need to be done to consider these?
- Guidance/legislation: has anything changed, and does this matter?
- Conclusions: can the conclusions of the original ES still be relied upon? Have any changed, if so, what are they?
- Non-Technical Summary: does this need updating?
- Reviewer: who is the audience reviewing the ESA? Consider providing further background information/ stronger cross-referencing to the original ES if the reviewer has changed since the original ES[4]

1. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) ('the EIA Regulations')
2. There is varying terminology regarding ESAs which can cause some confusion. ESA is also referred to as: 'Further Environmental Information Report'; 'Supplementary ES'; Supplementary Environmental Information (SEI)'; or 'Revised ES'.
3. See Regulation 25 of the EIA Regulations
4. For example, where a new case officer has taken over the determination of the application, or even where a consultancy has taken on the role of reviewing the ESA on behalf of the LPA

The extent to which one or a number of the above factors has changed since the original ES will guide the format of the ESA in any given scenario, ranging from a) – smallest extent of change to d) – greatest extent of change. These might include:

a. Covering letter

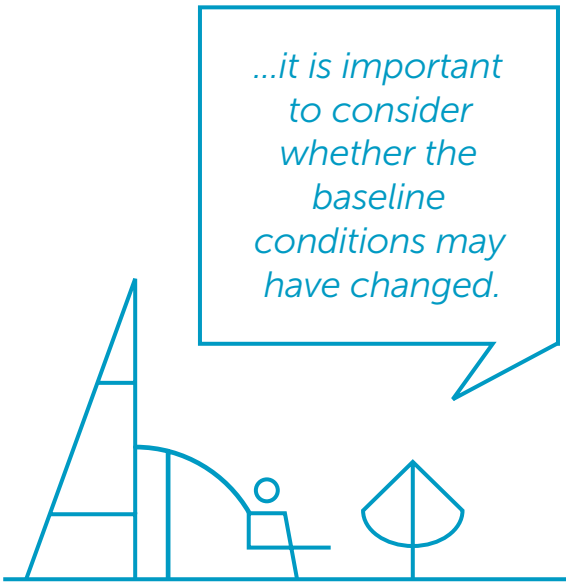
b. Covering letter supported with technical notes from ES consultants covering the impact on technical disciplines

c. A standalone Addendum report to be read in conjunction with the original ES

d. In the scenario where the LPA has reviewed and requested an ES addendum – an Addendum report including LPA Review comments to clearly demonstrate how these have been addressed

It should also be considered whether a whole new ES should be prepared from scratch, which may be the most appropriate course of action in certain circumstances.

For example, if the previous ES is several years out of date, it is important to consider whether the baseline conditions may have changed. Of course, the mantra of proportionality should continue to apply to ES Addendums and a new ES should be a relatively uncommon occurrence.



Points to bear in mind when preparing an ESA include:

1. Undertake thorough and robust **scoping** – ensure all topics are included and suitable methodologies are agreed
2. Ensure **statutory consultees** are included in design development from the **earliest possible opportunity**
3. Build **flexibility** into assessments – e.g. using a maximum parameters approach
4. Agree a **fixed cut-off point for the cumulative schemes list** with the LPA – this may need to be revisited if the application is subject to delays

Additionally, the following is important to ensure best practice:

1. Informally consult on the scope of additional information before submission
2. Clearly explain reasons for providing additional information in the ESA to the reviewer
3. Clearly explain why some topics are scoped out of the ESA[5]
4. Ensure the ESA follows a similar format as the original ES, and communicate that it should be read alongside the original
5. Provide an updated NTS including an accessible summary of both the ESA and the original ES
6. Ensure adherence with Regulation 25 advertising and consultation procedures – **the responsibility for which lies with the applicant**

5. I.e. where there are no significant changes to the original ES

Nathan Swankie

Ramboll (Originally published by Environ now part of Ramboll)

Originally published online - April 2015

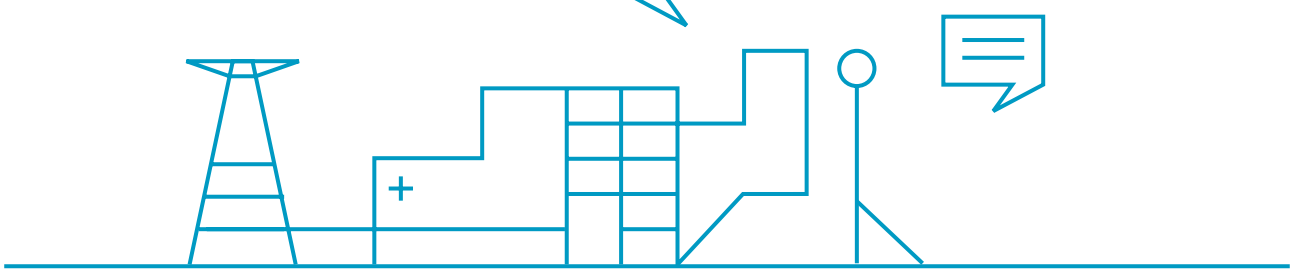
Post submission changes for EIA development

It's not uncommon for a proposed development to require changes post application submission (and pre-determination), for example the design of a scheme may be 'improved' as a result of consultation feedback on the application itself. Where the proposed development is subject to Environmental Impact Assessment (EIA), careful consideration of the changes in significant environmental effects associated with the revised proposals, alongside the reporting and consultation requirements of these changes, is needed in order to avoid potential procedural pitfalls. This process is often made more difficult due to the absence of clear guidance on procedures for dealing with post application changes, plus confusion over the terminology, which variously includes:

- ES Addendum;
- Supplementary Environmental Information (SEI) or Supplementary ES;
- Revised ES;
- Further information; and
- Additional information.

The ES Addendum and SEI terms are often used interchangeably. The original ES and the ES Addendum/ SEI effectively become one for the proposal going forward and it should be clear how the documents relate to each other, including providing clarity on what information has changed in the original ES. A revised ES may be a revision of the whole document or a revision of only those parts of the original ES which need to change as a result of modifications to the proposal. Further information and additional information tend to be considered as an update to an ES following a request from the Competent Authority rather than specifically due to scheme amendments. These have different consultation requirements compared to an ES Addendum or SEI. Nevertheless, experience has shown that this route has also been used by applicants to deal with environmental effects associated with scheme changes.

...where changes are made to applications for EIA development it is important to adopt the correct environmental strategy.



Deciding the extent to which environmental information should be re-submitted as a result of modifications to the project is sometimes difficult to ascertain. There are no statutory provisions or procedures and a Competent Authority may need help from the consultees in deciding whether the project:

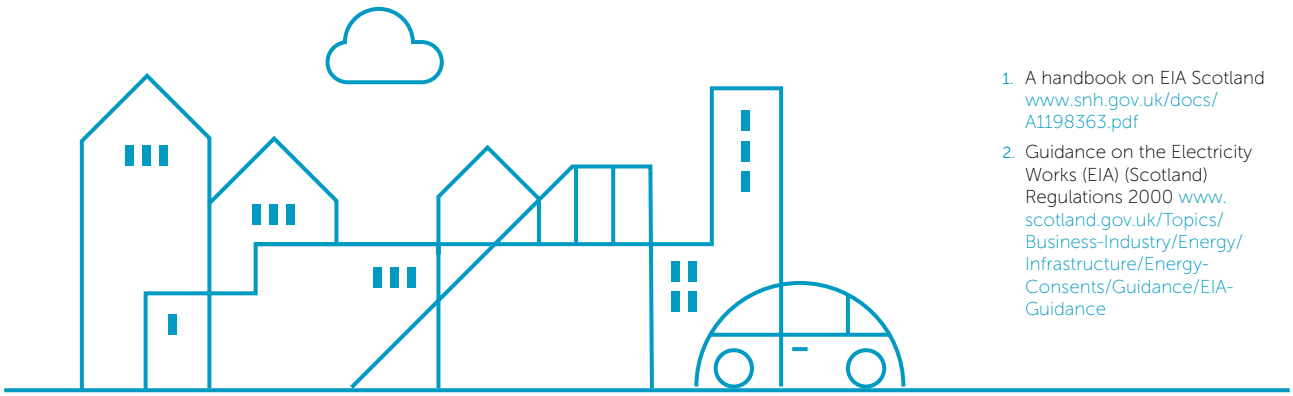
- is so extensively different that a new application and new ES is required; or
- is significantly different and the ES should be revised (with consultation on the revision) or added to by a supplementary ES (with consultation following); or
- the environmental effects are not so significantly different as to invalidate the original ES and consultation and publicity responses about the original documentation will remain valid.[1]

The key determining factor as to whether or not an amendment to the original submission can be allowed without a wholly new application, depends on whether the overall "character" of the plan is substantially altered. For instance, in the case that an alteration to the original application produces significant difference to the EIA or of public concern, then a re-application will most likely be warranted as suggested by the judge in the *Walker v Aberdeen City Council*, 1998 SLT 427 ruling:

"the main consideration is the nature and extent of the difference. If the amendment has the effect that substantial new planning issues... are raised, or that the [new] proposal is open to... objection, the amended application may...be in substance different from the original one."

How a Competent Authority deals with revisions or supplementary information is a matter for the Competent Authority. However, it will need to comply with the regulations in respect of publicity and consultation in respect of all further information or any other information submitted, whether it is submitted as a supplementary or revised ES or in any other form. The Competent Authority will use their powers to require the applicant to provide any further information to ensure the ES conforms to regulations.[2]

In summary, where changes are made to applications for EIA development it is important to adopt the correct environmental strategy. This may need some upfront assessment work to verify that the environmental effects are likely to be no more significant than for the original proposal. Ultimately, there should be a limited risk of third party challenges as long as modifications to an application do not increase the significance of EIA findings; the reporting route (SEI, Further Information, Revised ES etc.) has been agreed in advance with the Competent Authority; and, that public and stakeholder consultation has been carried out on the environmental information in line with the relevant Regulations.



1. A handbook on EIA Scotland www.snh.gov.uk/docs/A1198363.pdf
2. Guidance on the Electricity Works (EIA) (Scotland) Regulations 2000 www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Guidance/EIA-Guidance

Elizabeth Davies
Barton Willmore

Originally published online - March 2016

EIA & Section 73 Applications

S73 applications – when is EIA required?

At Barton Wilmore we regularly prepare Section 73[1] (s73) applications to seek minor material amendments. In the Environmental Planning team, we often find ourselves advising on the EIA implications and the most robust approach to take. A s73 application is considered to be a new planning application and therefore the EIA Regulations apply.

EIA is a litigious area and the Environmental Statement (ES) is often where objectors or their legal advisors would look first to seek to derail proposed developments. It is therefore important to understand if and how EIA may need to be taken into account when preparing a s73 application and to ensure the EIA process is watertight to minimise delays and the risk of third party legal challenge.

Rarely are two projects or approaches ever the same, but based on our experience we have found some common themes which we discuss below.

It is important to note is that the EIA regulations require the screening and assessment of a project subject to a s73 application to consider the development as amended when assessing the potential for likely significant effects.

Application that did not originally require EIA

This is probably the most straightforward case. Was an EIA required to accompany the original planning application? If the answer to this question is no, then in our experience you are unlikely to need to prepare an EIA to accompany the s73 application and this is almost certainly the case for developments under the thresholds set out in Schedule 1 and 2 of the regulations (unless the circumstances since the planning application was originally approved have significantly changed - more on this later).

However, a s73 is a new planning application and therefore where the development is listed under either Schedule 1 or Schedule 2 and satisfies the criteria or thresholds set, a local planning authority must carry out a new screening exercise and issue a screening opinion to determine whether EIA is necessary.

So for developments exceeding the thresholds set out in the EIA regulations, regardless of the changes being sought and whether an EIA was prepared to accompany the original planning application, our view is that the first task would be to request for an EIA Screening Opinion.

Application that was originally EIA development

The Planning Practice Guidance (PPG) provides guidance on s73 applications where an EIA was carried out for the original application:

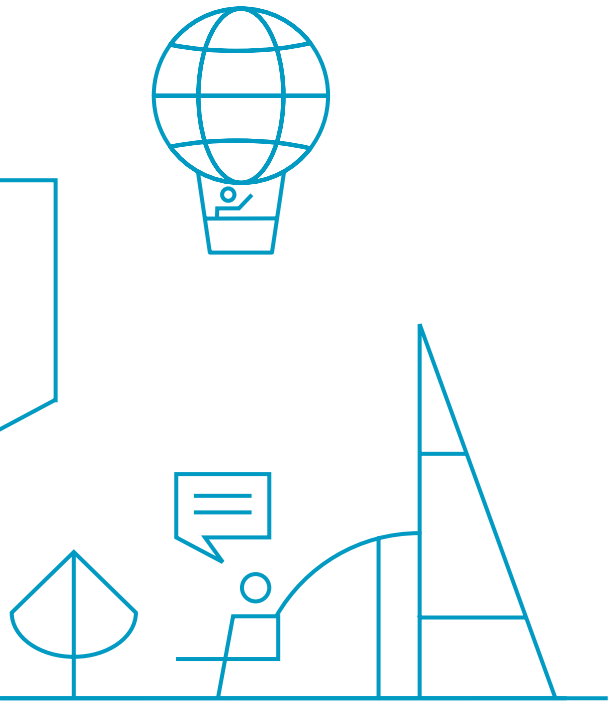
"Where an EIA was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original ES to satisfy the requirements of the Regulations. Whether changes to the original ES are required or not, an ES must be submitted with a section 73 application for development which the local planning authority considers to be EIA development".

The tricky part is evaluating whether changes to the ES are required or whether the original ES is sufficient to satisfy the requirements of the regulations. To inform this decision we would consider:

- The date the original ES was prepared (including changes to baseline environmental conditions (such as the ecological baseline, transport movements, air quality etc.), committed developments, updates to planning policy, and any changes to guidance affecting the assessment methodology used); and
- The nature of the amendments being sought.

If the ES is under a year old, the baseline conditions are current, and there are no changes to committed developments, policy or guidance, and the amendments sought do not affect the findings of the ES then it could be sufficient to submit the original ES provided this is explained somewhere in the application documentation. However, if changes have occurred, and the amendments being sought are more significant (such as amendments to the scale or positioning of built development) then the most robust approach would be to provide further environmental information in the form of an ES Addendum. In some cases, particularly where the age of the ES is such that significant updates are required, preparing an entirely new ES could be appropriate. This point also relates back to screening s73 applications discussed above. EIA may have been screened out for the original scheme, but if circumstances have changed such as a cluster of new committed developments coming forward or a new 'Sensitive Area' has been designated nearby, the potential exists for likely significant effects that were not identifiable previously.

A s73 application is considered to be a new planning application and therefore the EIA Regulations apply.



1. s73 of the Town and Country Planning Act 1990 - an application can be made to vary or remove conditions associated with a planning permission.

Ruth Jones
Senior Environmental Consultant at CampbellReith

Originally published online - November 2016

Greater Flexibility for Planning Permissions

When planning permission is granted, the developer must ensure that the proposed development will take place in accordance with the permission, conditions and any legal agreements attached to it.

Following a grant of planning permission, new issues may arise which will require changes to be made to the approved proposals. This article discusses the three main ways that amendments to planning permissions can be dealt with through the planning system.

Small changes to planning permission (non-material amendments)

Where changes to the approved planning permission are not viewed as 'significant', they may be described as 'non-material amendments'. The Ministry of Housing, Communities and Local Government (MHCLG) states that there is no statutory definition for the nature of changes that might constitute a non-material amendment, therefore, it is the responsibility of each planning authority to determine what constitutes a small change taking into consideration the context of the overall scheme and the circumstances of the case.

Section 96A of the Town and Country Planning Act 1990 provides the ability to make non-material amendments to planning permissions. This gives greater flexibility to adjust existing planning permissions without the need to submit a new full application; this allows schemes to be delivered subject to the conditions and time limits of the original permission, normally saving time and money.

If a non-material amendment is proposed to an existing permission or to the details of a condition attached to a planning permission, a simple application detailing the amendment, with the revised plans (if necessary) should be submitted. The application for a non-material change effects a change to the original planning permission but a new planning permission is not issued. The Local Planning Authority (LPA) must be satisfied that the amendment sought is non-material in order to grant an application under Section 96A and can impose new conditions or alter, or remove existing conditions. The normal planning application provisions for consultation do not apply to non-material amendments and the statutory determination period is 28 days (longer if agreed in writing).

An example of a non-material amendment to a scheme with planning permission was for the provision of dedicated 'Pegasus' equestrian crossing which was incorporated into the design of a road scheme. This amendment was considered to be non-material on the basis that the alignment of the road scheme remained unchanged, however, both changes to the existing signage and additional signage were required in order to provide the continued equestrian utility and public rights of way connectivity.

Minor-material amendments to the existing planning permission

Where changes to conditions on an approved planning permission are more significant, they may be described as a 'minor material amendment'. There is no set criterion to determine what constitutes a 'minor material amendment', however, MHCLG has defined this type of change as being *"any amendment where its scale and nature results in a development which is not substantially different from the one which has been approved"*.

If there are any doubts as to whether or not the proposed change would constitute a minor material amendment, it is recommended that pre-application discussions should be undertaken with the LPA to determine the materiality of the amendment. An application for a minor material amendment can be made under Section 73 of the Town and Country Planning Act 1990 (which is often termed a 'variation') and this produces a new planning permission that reflects the agreed 'variations'. This new permission sits alongside the original permission and does not replace it.

Where an Environmental Impact Assessment (EIA) was carried out on the original application, the LPA will need to consider if further information should be added to the original Environmental Statement to satisfy the requirements of the EIA Regulations. It should be noted that whether changes to the original ES are required or not, an ES must be submitted with the Section 73 application if it is EIA development; this will either be the original ES or an amended version of it. Timescales for determination of Section 73 applications are commensurate with the relevant scale for planning applications; namely 8 weeks for minor applications, 13 weeks for major applications and 16 weeks where EIA is required.

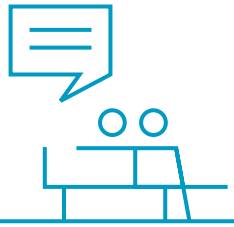
Material amendments

Should any fundamental or substantial modifications to a planning permission be considered, such as increasing the size of the application site, significant alternations to the design or the siting of the proposals, a new separate application will need to be submitted under the Town and Country Planning Act 1990. These changes are considered to constitute a 'material amendment'.

MHCLG guidance states that *"in deciding whether a change is material, a local planning authority must have regard to the effect of change, together with any previous changes made"*.

The flexibility provided by submitting small changes or variations to planning permissions has brought forward a number of benefits to developers. Amendments can arise for a number of reasons and can help to deliver better overall developments and respond to new or updated information subsequent to the granting of planning permission. Where amendments can be agreed under Section 96A, this has the benefit of not requiring a new planning permission, with the time and financial costs incurred and the LPA can ensure that it uses its resources effectively and efficiently.

It should be noted that whether changes to the original ES are required or not, an ES must be submitted with the Section 73 application.



Tom Rudd
Town Planner at BDP

Originally published online - April 2017

Wood Wharf: Ensuring Consistency through E.S Compliance Notes

Key Issues

A robust approach to assessing likely significant effects as a result of further design development or amendment.

Project Description

Wood Wharf is an opportunity to deliver and integrate a major mixed-use development at the scale of a city district within the pre-existing urban context of the Isle of Dogs. Canary Wharf Group's latest Scheme includes a maximum of 728,880 sqm of floor space, comprising approximately 3,600 new homes, 350,000 sqm of business space, 27,500 sqm of retail and 7,000 sqm of community uses.

Outline Planning Permission was granted in December 2014, consenting the development of a comprehensive masterplan over a 12-year period, subject to approval of multiple Reserved Matters Applications. The nature of Outline Planning Permission (OPP) is such that it offers flexibility, with detailed designs submitted in instalments as part of the subsequent Reserved Matters applications. The EIA process undertaken for Wood Wharf involved an Outline Environmental Statement (ES), to assess the detailed design information available at the OPP stage with a focus on Parameter Plans, Development Specification, Design Guidelines and the Indicative Scheme. ES Addendums are then produced for each submission of Reserved Matters Applications to further support the Outline ES.

As Reserved Matters Applications are within the Specified Parameters and largely align with the Indicative Scheme, the effects identified within the Outline ES should remain relevant.

However, as the Reserved Matters stage produces further detailed designs, it is crucial that these are appropriately reviewed to assess whether the effects identified in the Outline ES are altered, or if any new effects have arisen.

The requirement for Non Material Amendments (NMAs) is inevitable for a substantial development such as Wood Wharf, largely due to circumstantial changes and design evolution. Whilst ES Addendums are not statutorily required to be submitted in support of NMA applications, in the case of Wood Wharf they have proved a useful tool for investigating any potential for changes to the nature of effects and ultimately ensuring a high quality of design.

Amendments to the proposals can require additional technical assessments in order to evaluate whether design changes will alter the likely significant environmental effects submitted in the original Environmental Statement (ES) for the OPP or subsequent ES Addendums for Reserved Matters Applications, and importantly confirm if the current mitigation measures are sufficient or further mitigation needs to be identified.

The Importance of ES Compliance Notes for Non-Material Amendments (NMAs)

ES Compliance Notes have been prepared in order to review design alterations proposed through NMAs, and have formed a key part of the design and planning process. Design alterations could include minor changes to the external appearance or volume of a building, or alterations to the public realm.

Whilst such changes are considered non-material in the context of the proposals, it is essential that due consideration is given to the potential environmental impacts.

As the EIA Regulations require Environmental Statements (ES) to include a description of the likely significant effects of the development on the environment. To identify all likely significant effects the ES Compliance Notes prepared for the NMA applications provide an update to the OPP ES and subsequent Reserved Matters ESs, with a review of the relevant further technical assessments undertaken and the potential impacts relating to the following:

- Changes to the baseline conditions
- Consistency with the Specified Parameters and Indicative Scheme
- Effects that were not identified or identifiable at the Outline stage
- Incorporation of mitigation identified at the Outline stage
- Any further relevant information

With regards to the approach of the ES Compliance Note, an important part of the process is to liaise with the design team in order to understand the implications of the alterations against the previously assessed OPP and subsequent Reserved Matters. As Compliance Notes follow the general approach of the ES for OPP, the environmental topics which assessed the Indicative Scheme including Townscape and Visual, Wind and Micro Climate, and Sunlight, Daylight and Overshadowing are assessed at the NMA stage. A minor tweak in planning terms, such as the relocation of a flue for instance, may have the potential to produce significant changes to townscape and visual assessments.

It is therefore good practice to revisit the assessments through an ES Compliance Note and confirm the validity of previously identified likely significant effects of the development.

For a NMA, the changes should not be such that they trigger an EIA, however, it is still of pertinence to undertake the relevant technical assessments, and subsequently present their compliance with the ES for the OPP.

Therefore, whilst ES Compliance Notes are not a statutory requirement of a NMA application, they provide confirmation of the validity of previously identified environmental effects, or if necessary, identify the additional mitigation required.

The ES Compliance Note ensures that the final design of the proposed development is the design assessed through the ES and consequently all likely significant environmental effects and necessary mitigation measures are identified.

...as the Reserved Matters stage produces further detailed designs, it is crucial that these are appropriately reviewed...

Richard Kevan

Formerly Technical Director, Wardell Armstrong

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Planning and EIA – why it pays to get it right first time

It might sound obvious, but when it comes to planning for large scale EIA development it pays to make sure as far as possible that what you apply for as a developer is what you actually intend to build. It's not guaranteed that even slight amendments made later to the scheme will be acceptable. And submitting a new planning application and a revised EIA costs a significant amount of money – as well as bringing the risk of an unwelcome delay to the programme.

Take, for example, the pioneering plan to recover energy from waste at the former town gas works on Aire Valley Road in Keighley, West Yorkshire. After the site had remained vacant for decades it was bought in 2010 by Keighley Clean Energy. Part of their visionary and ambitious development plan was to transform it by 2017 into a £120 million state-of-the-art facility with three interconnected EfW plants. The site would be restored once again to its historical role of generating energy for the region – but in a more sustainable way than ever before.

The idea was that commercial and industrial waste from local businesses in and around Bradford would be delivered by HGV into a materials reception hall. From here it would be craned onto a conveyor and taken into the plant to be combusted. The heat from the combustion process would be converted to steam and driven through a turbine to generate electricity, while the bottom ash that fell through a grate would be sold as aggregate for road construction.

In an adjacent building on the same site, a tyre crumb melting plant with a capacity of 10,000 tpa would use pyrolysis to convert pre-processed, shredded, end-of-life tyres into electricity Superheating the rubber crumb to 900°C would produce a syngas that could be burned in a gas engine to generate power. The residual biochar, with a calorific content even higher than coal, could also be put back through the main EfW plant to produce yet more electricity to be sold back to the grid. The third plant would convert waste plastics into diesel using fractional depolymerisation. It would apply superheating to plastic bags and bottles to change their hydrocarbon chains into liquid diesel.

Truly pioneering. Truly state of the art. And in April 2014, planning permission was granted by Bradford City Council's planning committee for the three interconnected EfW plants. So far so good. But now that planning consent had been granted, the task of carrying out detailed design for the proposed plants began – as did the search for a technology partner.

Serious setback

Once the technology partner had been chosen and a level of detailed design had been completed, it started to become clear that amendments might be needed to the agreed layout in order to achieve the optimal design and the best possible operational conditions.

The proposed changes included reducing the number of energy facilities on site from three to two, removing the tyre waste pyrolysis activity, slimming the stack from a 4m diameter to 2.2m diameter, increasing the height of the buildings by a maximum of 5m, changing the layout and footprint of several buildings, and increasing the massing of the buildings.

These proposed changes were discussed with the local planning authority of Bradford City Council. They felt that they were significant enough to warrant a new planning application together with an updated EIA. This work was duly done, and the new planning application was submitted in April 2015.

As had been expected, the issues raised during the determination of the application were very similar to those raised during the first one. They related to two main environmental issues - landscape/residential visual amenity, and impacts on heritage assets. Overall, the proposal was considered by the officers to be sustainable development in accordance policy.

But in part they were also seen as contrary to policies on landscape and residential amenity for four properties.

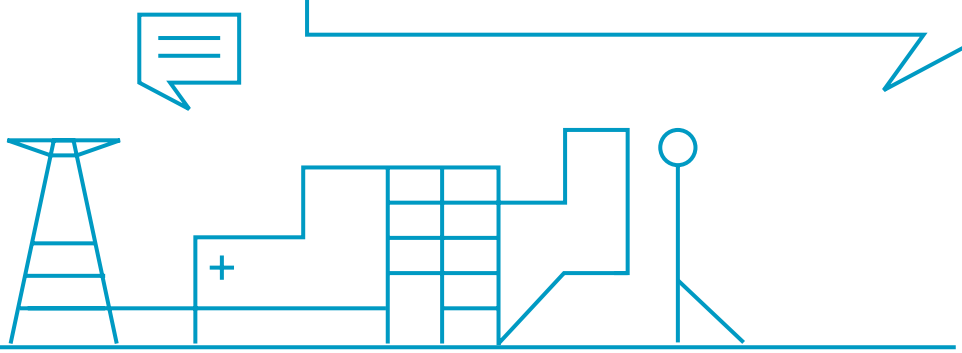
The application was presented to the planning committee in August 2015. After much debate regarding the massing and finish of the buildings and a site visit by the members of the planning committee the decision was taken to refuse planning permission – a serious setback.

Clear lesson

The reasons for this refusal were the detrimental impact on visual amenity and the adverse impact on landscape character of the area due to the height, massing and form and the industrial finish to the buildings. This came as a surprise to the applicant given the existing permission for the site - and the fact that the proposed finish and materials for the buildings had not changed from the original application and that assessed in the original EIA.

Understandably frustrated - but nonetheless undeterred and unwilling to abandon their enterprising and ambitious project - Keighley Clean Energy decided not to appeal the decision. Instead they worked hard with their chosen technology supplier to come up with a scheme that would still fit within the buildings for which they got planning consent in 2014.

It's not guaranteed that even slight amendments made later to the scheme will be acceptable.



Do you make effective use of ALL of IEMA's IA member resources?

IEMA's website contains a treasure trove of IA related content, as well as information about IEMA's volunteer network groups, from regional groups, through UK impact assessment to ESIA across international finance. But not everyone makes the most of this free member content, including:

- Future events and webinars.
- Recordings of past webinars, with over 24 hours' worth of IA content.
- IA Guidance & advice: From Effective NTS, through climate (GHG and Adaptation), health, influencing design and delivery, to forthcoming documents on material assets and major accidents & disasters.
- The Proportionate EIA Strategy.
- Over 400 EIA articles and 200 case studies related to EIA, developed by Q Mark registrants in recent years.
- Individual and Organisational recognition specific to EIA, through the EIA Register and EIA Quality Mark schemes respectively.

  Contact details to engage with the steering group members for the:

  - IA Network
  - GESA Group (Global Environmental & Social Assessment)
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Summary

Clare Richmond - Guest Editor

As the Finney v Welsh Minister & Ors (2019) case seeks to redefine accepted practice regarding section 73s, which now provide less flexibility, it's worth taking the time to reflect on whether other existing practice is in the spirt of the EIA Regulations. Just because we're accustomed to a certain approach, does not mean it is the best or most proportionate.

We occasionally need to remind ourselves, that the public are a key intended audience of ESs and the documents within them. This is particularly relevant to section 73s given the endless ES addendums which the overall 'ES' can comprise, especially when you're more than one section 73 down the line from the original planning permission. Although this is may be less of an issue moving forward, depending on how the Finney judgement plays out!

Whilst there a number of options available to provide flexibility in EIA and planning, the best approach is to seek permission for what is required in the first place, and especially a permission which gives the flexibility envisaged. If change is required later down the line, the best approach must be to take stock of the revised requirements, and then seek the appropriate route to achieve this. All while ensuring that the EIA process is shaping the changing EIA Development, and not an afterthought to tick the validation box. It's a balance of providing sufficient detail to inform assessment, and retaining flexibility for what is needed now and in the future.

Thank you to all the authors for providing their thoughts and perspectives on flexibility in EIA.

Acknowledgements

IEMA's Impact Assessment Network (IA Network) Steering Group is a group of 15 members that volunteer their time to provide direction to the institute's activities in the field. The Steering Group members play a vital role in ensuring good practice case studies, webinars and guidance are developed and shared across the UK EIA community.

Clare Richmond has acted as the guest editor for this edition of the new IA Outlook Journal. We recognise and appreciate her contribution. We also offer thanks to the editors and reviewers of this edition: **Rufus Howard and Charlotte Lodge (IEMA)**, plus members of the IA Network Steering Group in producing this issue of the IA Outlook Journal. We would like to thank the authors of the articles in this fifth edition of Impact Assessment Outlook: **Jonathon Turner, Nathan Swankie, Lauren Tinker, Elizabeth Davies, Ruth Jones, and Richard Kevan**. Alongside the authors we would also like to thank the EIA Quality Mark registrant organisations, who both gave the authors time and encouragement to write the articles and allowed their publication in this IEMA IA Network publication, they are: **Deloitte, Ramboll, Terence O'Rourke Ltd, Barton Willmore, BDP, CampbellReith, and Wardell Armstrong.**

IEMA's EIA Quality Mark - a scheme operated by the Institute allowing organisations (both developers and consultancies) that lead the co-ordination of statutory EIAs in the UK to make a commitment to excellence in their EIA activities and have this commitment independently reviewed. The EIA Quality Mark is a voluntary scheme, with organisations free to choose whether they are ready to operate to its seven EIA Commitments: EIA Management; EIA Team Capabilities; EIA Regulatory Compliance; EIA Context & Influence; EIA Content; EIA Presentation; and Improving EIA practice.

Perspectives on Flexibility in EIA

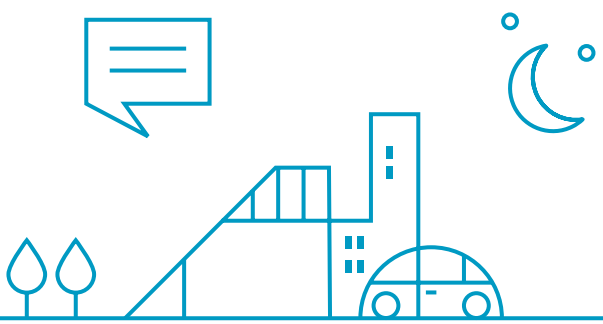
Thought pieces from UK practice

This fifth edition of the Impact Assessment Outlook Journal provides a series of thought pieces around the theme of flexibility within EIA. In this edition, the Guest Editor (Clare Richmond) has selected seven articles produced by EIA professionals from respected organisation's registered to IEMA's EIA Quality Mark scheme. The result is a thought-provoking quick read across different aspects of UK practice exploring different elements of flexibility in EIA.

About the Guest Editor: Clare Richmond BSc (Hons), MSc, PIEMA

Clare is the EIA Officer at the London Borough of Tower Hamlets (LBTH), and has 5 years' experience as an EIA specialist. She regulates the EIA process for LBTH, which is one of the fastest growing authorities in the UK and is home to the Tower of London and Canary Wharf. Her role includes authoring EIA Screening and Scoping Opinions, reviewing ESs, and co-ordinating internal and external specialists to aid the review process. She has previously regulated the EIA process for appeals and National Significant Infrastructure Projects (NSIP).

In addition to regulator roles, Clare has experience from another government department in which she spent more than several weeks in the Belizean Jungle (all in the name of EIA), and as an EIA consultant. Clare has been a member of the IEMA Impact Assessment Steering Group for one year.



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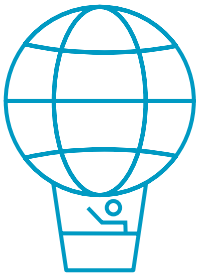

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