

## Supplementary Planning Guidance (SPG) Greener Resources

# SPG 8h Environmental Impact Assessments

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## 1. INTRODUCTION

- 1.1 In dealing with development schemes that require an environmental statement under these the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 the Council will have particular regard to the following: adopted Haringey Unitary Development Plan (1998) Policies OP 4.1-3 (inclusive), RIM 1.5 & 3.2, Haringey UDP First Deposit Consultation (2003) Policies UD1, 2, 10 and OS5 & OS6, SPG 8g and SPG 8i and this supplementary guidance.
- 1.2. Supplementary guidance is provided below regarding the following:
- Background: EC Directive 97/11/EC
  - Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
    - When is development Environmental Impact Assessment (EIA) Development?
    - Screening for EIA Development
    - Scoping EIA Development
    - Submission of a planning application with an Environmental Statement (ES)
    - Submission of an ES after the planning application
    - Fees
    - Consideration of ES and EIA applications
    - Duties to inform the public and the Secretary of State of decisions.
    - Outline application

## 2. BACKGROUND: EC DIRECTIVE 97/11/EC

- 2.1. "...the assessment procedure is a fundamental instrument of environmental policy as defined in Article 130r of the Treaty and of the Fifth Community Programme of policy and action in relation to the environment and sustainable development.....Community policy is based on the precautionary principle and on the principle that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

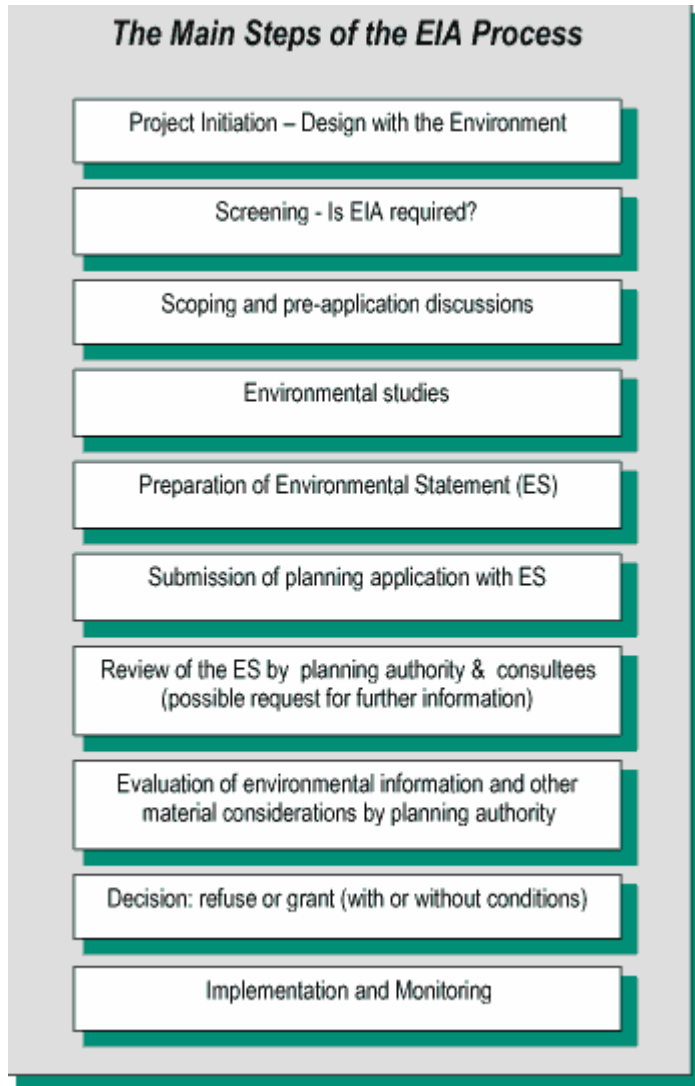
EC Directive 97/11/EC

### **3. TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 1999**

- 3.1. The following contains a brief note on the basic regulations for Environmental Impact Assessment (EIA) development. Please be aware that this information provides an outline only. Reference should be made to the Regulations themselves for further information if considering EIA development.
- 3.2. A number of specified types of development require an assessment of environmental impacts to accompany an application for planning permission following the introduction of the above mentioned Regulations coming into effect in March 1999. Assistance in interpreting and implementing the Regulations is given in Circular 02/99.
- 3.3. It is important to note that the Regulations have made a number of significant changes to the planning process. For example, alterations to notification and consultation processes, removal of permitted development rights, increasing the 8 week period before an appeal to the Secretary of State against non-determination can be lodged to 16 weeks, and the decision itself. It is also important to be aware that the Regulations may have significantly increased the scope for legal challenge to planning decisions.

#### **A. When is development EIA Development?**

- A.1 EIA development is defined in the Regulations as any development identified in Schedule 1; and Schedule 2 development likely to have significant impacts on the environment owing to factors such as its nature, size or location. Schedule 1 and 2 are appendices to the regulations. An application submitted with a supporting Environmental Statement (ES) is automatically considered EIA development.
- A.2. The most likely development within Haringey that would require an Environmental Statement would fall within Schedule 2 (10(b)) – urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas. The applicable threshold is that the area of development exceeds 0.5 hectares.
- A.3. Aside from the actual consideration of an ES the regulations refer to two important processes – ‘screening’ and ‘scoping’ opinions.



## **B. Screening for EIA Development**

- B.1 A Screening Opinion determines the need for an EIA. The development must be considered against the criteria in Schedule 3 of the Regulations. Schedule 3 is an appendix of the Regulations.
- B.2 Haringey Council, as the Local Planning Authority, has 3 weeks to adopt a screening opinion following the receipt of a specific request for one. However, the submission of an application can act as a request for a screening opinion. So it is important that validating Officers identify applications that might require an ES at an early stage. A copy of the screening opinion must be sent to the person making the request, accompanied by a written statement giving clear and precise reasons for the conclusion. If the applicant does not inform the Council that they agree to submit an ES within 3 weeks of a request to do so the application is deemed to be refused. A copy of the screening opinion and statement must be placed on the statutory register.

## **C. Scoping EIA Development**

- C.1. The Scoping Opinion identifies the range of information that the Council considers needs to be contained within an Environment Statement (scope of the document).
- C.2. Copies of the draft scoping opinion must be sent to the statutory consultees listed in the Regs. The scoping opinion should be adopted within 5 weeks of receiving the request (if the screening and scoping option is requested at the same time, the Council must adopt a scoping opinion within 5 weeks of the screening opinion being adopted) and a copy must be sent to the applicant. Officers should consider at an early stage whether an extension of time is likely to be necessary and agree this in writing with the applicant. The scoping opinion must be kept available for two years on the statutory register.

## **D. Submission of a planning application with an Environmental Statement**

- D.1 Haringey Council will require an environmental statement for all relevant development, including any submitted in Historic Parks and Gardens (see UDP Consultation Policy OS6)
- D.2. On receipt of an application accompanied by an ES, three copies must be forwarded to the Secretary of State within 14 days along with a copy of the relevant application documentation.
- D.3. The application must be treated in the same way as any other planning application, but with the following additional requirements:
- the application and ES must be publicised (by site notice and press advertisement) stating:
  - that an ES has been submitted which will be open to inspection by the public and give the address where the documents can be inspected free of charge;
  - an address where copies of the statement may be obtained;
  - state that a copy may be obtained while stocks last and the amount of any charge;
  - state the date (at least 21 days) by which any written representations should be made to the Council.

## **E. Submission of an Environmental Statement after the planning application**

- E.1. The procedures are essentially the same as above, but the applicant is required to follow a number of procedures prior to submitting an ES primarily relating to site notices, public notification and advising that representations may be made to the Council. (See Reg. 14)

## **F. Fees**

- F.1. Planning application fees are not affected by the fact that an ES is required.

## **G. Consideration of Environmental Statements and EIA Applications**

- G.1. Applications are assessed as for a normal application for planning permission but within a 16 week timeframe. All Environmental Information (the ES) must be taken into account and reasons for refusal or approval given.

- G.2. The following list is from Part II of Schedule 4 of the Regulations and comprises the minimum requirements for any EIA. In addition to this, Officers should select other relevant factors from Part I of Schedule 4 – these will often have been identified at the scoping opinion stage.

1. Description of development including site, design and size;
2. Description of measures to avoid, reduce and if possible, remedy significant adverse effects;
3. Data required to identify and assess the main effects which the development is likely to have on the environment; this is expected to include an independently assessed environmental performance assessment
4. Outline of the main alternatives studied with associated reasons;
5. Non-technical summary of the above information.

- G.3. A planning application is not invalid because an inadequate ES has been supplied. However, if a developer fails to provide enough information to complete the ES, the application can be determined only by a refusal.

- G.4. If an EIA application is received without an ES, the Council can refuse to consider the application until the ES is received.

- G.5. The Council may require additional information to be submitted, and it is not tied by the adopted scoping opinion. It may request further information to be submitted even where the ES complies with the scoping opinion.

- G.6. It is technically possible for an EIA application to be made in outline form. However, case law has established that generalised descriptions of development are insufficient to comply with the Regs.

## **H. Duties to inform the public and the Secretary of State of decisions**

- H.1. The Council has an obligation to inform the Secretary of State (SoS) of the decision. Then publish a notice in a public newspaper circulating in the locality in which the relevant land is located. The decision and any attached conditions, the main reasons and considerations, and a description of the main measures to avoid, reduce, and if necessary

offset the major adverse effects of the development must be kept on the statutory register.

## I. **Outline Applications**

- I.1. Under the UK planning system, it is the planning permission that enables the applicant to proceed with the development. Therefore, in the case of outline applications, an EIA application must be properly assessed for possible environmental effects prior to the grant of outline permission. It will not be possible to carry out an EIA at the reserved matters stage. The planning permission and the conditions attached to it must be designed to prevent the development from taking a form - and having effects - different from what was considered during the EIA.
- I.2. This was confirmed in the case of *R V SSTLR ex parte Diane Barker* (2001) by the Court of Appeal.
- I.3. A planning authority may decide, given the circumstance of a case, that they are unable to entertain an outline application unless further details concerning the siting, design, external appearance, access or landscaping have been submitted
- I.4. In considering whether an outline application accompanied by an ES can be entertained, planning authorities and developers should bear in mind whether:
  - enough detail is known about the project to prepare an ES in accordance with Schedule 4 of the Regulations, particularly the description of the development and the processes, and to give 'an estimate by type and quantity of expected residues and emissions';
  - for the particular project, an ES based on an outline application is consistent with the principle of project design and environmental considerations progressing together;
  - the public's ability to make representations will be unduly constrained;
  - the complexity of the likely environmental effects can only be properly explored at the detailed stage;
  - an outline will provide sufficient information for the planning authority to determine the application.
- I.5. The cases of *R v Rochdale MBC ex parte Tew* (1999) and *R v Rochdale MBC ex parte Milne* (2000) set out the approach that planning authorities need to take when considering EIA in the context of an application for outline planning permission if they are to comply with the Directive and the Regulations.
- I.6. To be lawful a conditions were attached to the permission "to tie the outline permission ...to the documents which comprise the application". I.e. an illustrative master plan sufficient to assess the scale and nature of significant impacts. The outline permission was restricted so that the development that could take place would have to be within the

parameters of the matters assessed in the ES. Reserved matters would be restricted to matters that had previously been assessed in the ES. Any application for approval of reserved matters that went beyond the parameters of the ES would be unlawful, as the possible environmental effects would not have been assessed prior to approval.

I.7. Lessons learnt

- i) An application for a "bare" outline permission with all matters reserved for later approval is extremely unlikely to comply with the requirement of the EIA Regulations;
- ii) When granting outline consent, the permission must be "tied" to the environmental information provided in the ES, and considered and assessed by the authority prior to approval. This can be usually done by conditions although it would also be possible to achieve this by a section 106 agreement. An example of a condition was referred to in *ex parte Milne (2000)*. "The development on this site shall be carried out in substantial accordance with the layout included within the Development Framework document submitted as part of the application and shown on (a) drawing entitled 'Master Plan with Building Layouts'." The reason for this condition was given as "The layout of the proposed Business Park is the subject of an Environmental Impact Assessment and any material alteration to the layout may have an impact which has not been assessed by that process." (see paras. 28 and 131 of the judgement);
- iii) Developers are not precluded from having a degree of flexibility in how a scheme may be developed. But each option will need to have been properly assessed and be within the remit of the outline permission
- iv) Development carried out pursuant to a reserved matters consent granted for a matter that does not fall within the remit of the outline consent will be unlawful.

*This SPG has been consulted on as part of the Haringey UDP First Deposit Consultation. As such, it is a material consideration in determining planning applications.*