

BikePark Wales Environmental Statement : Vol.1

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Chapter 2: Legislative Context

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CHAPTER 2

LEGISLATIVE CONTEXT

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2 LEGISLATIVE CONTEXT

2.1 Introduction

2.1.1 This chapter sets out the legislative context for Environmental Impact Assessment process.

2.2 Requirement for Environmental Impact Assessment

2.2.1 The European Community Council Directive 85/337/EEC first set out the requirement for Environmental Impact Assessment (EIA). The 1985 Directive was amended by Council Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC. The 1985 Directive and the amending provisions of the subsequent Directive were codified in Directive 2011/92/EU, which was amended by EU Directive 2014/52/EU.

2.2.2 In Wales the Directive is implemented by the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017). These Regulations consolidate with amendments the provisions of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations (the 1999 Regulations) and subsequent amending instruments. The Regulations state that the relevant *“planning authority must not grant planning permission or subsequent consent”* to an application for planning permission for EIA development *“unless they have taken the environmental information into consideration, and they must state in their decision that they have done so”* (par.3, part 1, 2017).

2.3 Environmental Impact Assessment Screening

2.3.1 The Regulations set out the requirements for when a development needs to be subject to EIA. Schedule 1 of the Regulations provides a list of those projects that will always be required to be subjected to EIA. These projects include nuclear power stations, integrated chemical installations, and metal smelting works.

2.3.2 Schedule 2 provides thresholds beyond which it is considered more likely that the project will require EIA. Development proposals below these thresholds may still be held to be EIA development if they are considered to still have significant environmental effects. Conversely, projects above these thresholds may not be considered to be EIA development if they are not expected to have significant environmental effects. The proposed development falls under category 11(a) of Schedule 2 (*“permanent racing and test tracks for motorised vehicles”*). The threshold for this category of development is 1ha.

2.3.3 When it is being considered whether Schedule 2 development is EIA development the criteria set out under Schedule 3 of the Regulations must be taken into account. The criteria identified in Schedule 3 are:

Schedule 3

Characteristics of development

1. *The characteristics of development must be considered having regard, in particular, to—*

(a) the size of the development;

- (b) *the cumulation with other development;*
- (c) *the use of natural resources;*
- (d) *the production of waste;*
- (e) *pollution and nuisances;*
- (f) *the risk of accidents, having regard in particular to substances or technologies used.*

Location of development

2. *The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—*

- (a) *the existing land use;*
- (b) *the relative abundance, quality and regenerative capacity of natural resources in the area in the area and its underground (including soil, land, water and biodiversity);*
- (c) *the absorption capacity of the natural environment, paying particular attention to the following areas—*
 - (i) *wetlands, riparian areas, river mouths;*
 - (ii) *coastal zones and the marine environment;*
 - (iii) *mountain and forest areas;*
 - (iv) *nature reserves and parks;*
 - (v) *European sites and other areas classified or protected under national legislation;*
 - (vi) *areas in which there has already been a failure to meet the environmental quality standards laid down in the Union legislation and relevant to the project, or in which its is considered such a failure;*
 - (vii) *densely populated areas;*
 - (viii) *landscapes and sites of historical, cultural or archaeological significance.*

Types and characteristics of the potential impact

3. *The likely significant effects of the development on the environment must be considered in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the development on the factors specified in regulation 4(2), taking into account—*

- (a) *the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);*
- (b) *the nature of the impact*
- (c) *the transboundary nature of the impact;*
- (d) *the intensity and complexity of the impact;*

- (e) *the probability of the impact;*
- (f) *the expected onset, duration, frequency and reversibility of the impact;*
- (g) *the cumulation of the impact with the impact of other existing and/or approved development; and*
- (h) *the possibility of effectively reducing the impact” (pars 1-3, Schedule.3).*

2.4 Environmental Impact Assessment Screening Opinion

- 2.4.1 Part 2 of the Regulations set out the procedure for enquiring of the Local Planning Authority whether, or not, it considers that the proposed development is EIA development. This is referred to in the Regulations as a ‘screening opinion’. It is stated that a request for a screening opinion shall be accompanied by: a plan sufficient to identify the land; a description of the characteristics of the development; a description of the location of the development; a description of the aspects of the environment likely to be significantly affected by the development; and, such other information or representations as the person making the request may wish to provide or make (par.6 (2), part 2).
- 2.4.2 Where a Local Authority (or the Welsh Ministers) have to decide under the Regulations whether Schedule 2 development is EIA development, the Authority or the Welsh ministers must take into account the information provided by the person minded to carry out the development; the available results of other environmental assessments carried out pursuant to Union legislation (other than the legislation implementing the requirements of Directive); and, the selection criteria set out in Schedule 3 as are relevant to the development (par.5 (8), part 2).
- 2.4.3 Where a Local Authority adopt a screening opinion (or the Welsh Ministers makes a screening direction) that the proposed development is EIA development that opinion shall be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion (par.5 (8), part 2). An Environmental Statement (ES) must accompany where it is considered that the proposed development is EIA development. The requirements for the contents of an ES are set out later below.
- 2.4.4 The proposed development in isolation falls within Category 10(b) of the 2017 Regulations, as it would comprise of more than 1 hectare of urban development, which is not dwelling house development. The proposed development would also mark a significant extension to the existing BikePark Wales facility and might result in cumulative impacts that need to be considered. A request for a Screening Opinion was therefore submitted to the Local Planning Authority in October 2018.
- 2.4.5 A screening opinion was received from the Local Planning Authority in November 2018. The screening opinion considered the potential significant effects of the development, with particular regard to those matters set out in Section 3 of Schedule 3 of the 2017 Regulations (as above).
- 2.4.6 The screening opinion adopted by the Local Authority concluded as follows: *“Having regard to the scale and nature of the proposed development, it is considered that there*

are potential significant impacts on the landscape character and the ecological value of the land. In reaching this view, regard has been given to the details submitted in support of the screening request. Therefore it is concluded that an Environmental Impact Assessment is required for the proposed expansion of the mountain bike centre”.

2.4.7 The request for a screening opinion and the screening opinion provided by the Local Authority is included in Appendices 2.

2.5 Content of an Environmental Statement

2.5.1 There is no statutory provision relating to the form of an ES however it must contain the information that is set out in Schedule 4 of the Regulations (where relevant). An ES is defined in the Regulations as a statement:

- “(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but*
- (b) that includes at least the information referred to in Part II of Schedule 4” (Reg. 2(1)).*

2.5.2 Schedule 4 of the Regulations states thus:

“1. Description of the development, including in particular—

- (a) a description of the location of the development;*
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works and the land-use requirements during the construction and operational phases;*
- (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;*
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) and quantities and types of waste produced during the construction and operational phases.*

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant or appellant which are relevant to the proposed development and its specific characteristics and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline

scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. *A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.*
5. *A description of the likely significant effects of the development on the environment resulting from, inter alia—*
 - (a) *the construction and existence of the development, including, where relevant, demolition works;*
 - (b) *the use of natural resources in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;*
 - (c) *the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances and the disposal and recovery of waste, the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);*
 - (d) *the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;*
 - (e) *the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;*
 - (f) *the technologies and the substances used.*

The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and longterm, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(1) and Directive 2009/147/EC(2).

6. *A description of the forecasting methods or evidence used to identify and assess the effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.*
7. *A description of the measures envisaged to avoid, prevent, reduce or,*

if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a postproject analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. *A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.*
9. *A non-technical summary of the information provided under paragraphs 1 to 8.*
10. *A reference list detailing the sources used for the descriptions and assessments included in the environmental statement” (pars 1-10, Schedule.4).*

2.6 Environmental Impact Assessment Scoping Opinion

- 2.6.1 Part 4 of the Regulations also set out the procedure for enquiring of the Local Planning Authority its opinion as to the information to be provided in the ES. This is referred to in the Regulations as a ‘scoping opinion’. The Regulations stipulate that a request for a scoping opinion must include: a plan sufficient to identify the land; a brief description of the nature and purpose of the development and its possible effects on the environment; and, such other information as person making the request my wish to provide (par.2 (a), part 4).
- 2.6.2 No formal scoping opinion was requested from the Local Authority. However, informal discussion was undertaken. This confirmed that the ES should assess the likely ecological and landscape and visual impacts of the proposed development. Written advice was also provided.
- 2.6.3 In respect of ecology, the advice noted the following: *“The attached document sets out some of the matters that would need to be considered in the EA. Essentially, there is a need to assess the impact of the existing development in combination with the proposed development. The matters concerning the potential impact of the proposed development on protected species was largely addressed in the recent survey work, the recommendations of which were accepted. The impact/loss of habitats, particularly the significant loss of SINC quality environments is of greatest concern and should form a key focus in the EA. It may not be necessary to conduct further survey work, as the*

evidence included in the most recent survey reports, together with the survey work previously carried as part of earlier applications may be sufficient”.

2.6.4 In respect of landscape, the advice noted the following: *“The assessment of the landscape should follow the LVIA 3rd Edition guidelines, which will provide an holistic approach that will inherently identify the key areas to assess further. Regard should be given to the impacts/ changes to the landscape as a result of both the existing and proposed development. As noted in earlier correspondence, the visual impact of the development within the landscape may be limited or easily mitigated. Of greatest concern is the likely impacts on the character of the landscape. LANDMAP should be utilised in the LVIA to provide baseline information of the key characteristics. There are likely to be areas of overlap between the ecological/habitats and the landscape impacts i.e. the loss of SINC environments may equally contribute to the deterioration of the landscape qualities. As such, consideration should be given to potential mitigation/compensation measures that could potentially address both issues”.*

2.6.5 The informal written advice provided is included in Appendices 2.

