

BIKE PARK WALES, ENVIRONMENTAL STATEMENT VOL1.
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.

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 A screening opinion was received from the Local Planning Authority on the 14th April 2022. 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).
- 2.4.5 The screening opinion adopted by the Local Authority concluded as follows:
- “The proposal in isolation would not fall within Category 10(b) of the 2017 Regulations, as it would comprise less than 1 hectare of urban development, which is not dwellinghouse development. However, when considering the scale of the development cumulatively with the consented extension to the mountain bike centre (P/19/0073), the development would amount to more than 1 hectare of urban development. Furthermore, when considered in relation to the wider BPW facilities and associated trails, the overall development would likely exceed an area of 5 hectares...*

Having regard to the scale and nature of the proposed development, it is considered that there are potential significant impacts on the landscape character of the land. In reaching this view, regard has been given to the details submitted in support of the screening request and the evidence within the EIA for the previously consented scheme (P/19/0073) of which this development forms part of. Therefore it is concluded that an Environmental Impact Assessment is required for the proposed development at the mountain bike centre”.

- 2.4.6 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

- 2.5.1.1 The Regulations explain that the term Environmental Statement means a statement that includes information referred to in regulation 17, and Schedule 4 also lists the information for inclusion in an ES. These are both included below for reference:

“(3) An environmental statement is a statement which includes at least—

(a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;

(b) a description of the likely significant effects of the proposed development on the environment;

(c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives 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 the option chosen, taking into account the significant effects of the development on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(4) An environmental statement must—

(a) be prepared by persons who in the opinion of the relevant planning authority or the Welsh Ministers, as appropriate, have sufficient expertise to ensure the completeness and quality of the statement;

(b) contain a statement by or on behalf of the applicant or appellant describing the expertise of the person who prepared the environmental statement;

(c) where a scoping opinion or direction has been issued in accordance with regulation 14 or 15, be based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was the subject of that opinion or direction);

(d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and

(e) take into account other relevant environmental assessments required under Union legislation or any other provision of domestic legislation, with a view to avoiding duplication of assessment.”

2.5.1.2 Schedule 4 of the regulations sets out the information for inclusion in full ESs 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 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 processes), 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, oil and subsoil pollution, noise, vibration, light, heat, radiation) 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,

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) 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;

(f) 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;

(g) 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 long-term, 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 post-project 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."

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 landscape and visual impacts of the proposed development. This was in line with the formal screening opinion.

2.6.3 The informal written advice provided is included in Appendices 2. The structure of the ES identified below:

Table 2.1: Proposed content and structure of the Environmental Statement

Chapter Number	Subject
Chapter 1	Introduction
Chapter 2	Legislative Context and EIA Process
Chapter 3	Site Description
Chapter 4	Development Description
Chapter 5	Assessment of Alternatives
Chapter 6	Landscape and Visual Impact Assessment