

COUNCIL'S LEGAL NOTE ON THE ES FURTHER INFORMATION WITH RESPECT TO DAYLIGHT AND SUNLIGHT

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1. The Inspector has requested the Council's opinion on whether a direction ought to be made for "further information" pursuant to regulation 25(1) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the "Regulations"). Should a direction be made, then in accordance with regulation 25(2) because the information will be provided for the purposes of the Inquiry the requirements of paragraphs (3) to (11) of regulation 25 would not apply and so no procedural consequences would flow.

2. Regulation 25(1)-(2) provides:

"(1) If a relevant planning authority, the Secretary of State or an inspector is dealing with an application or appeal, as the case may be, in relation to which the applicant or appellant has submitted an environmental statement, and are of the opinion that, in order to satisfy the requirements of regulation 18(3) and (4), it is necessary for the statement to be supplemented with additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application in order to be an environmental statement, the relevant planning authority, Secretary of State or inspector as the case may be must notify the applicant or appellant in writing accordingly, and the applicant or appellant must provide that additional information; and such information provided by the applicant or appellant is referred to in these Regulations as "further information".

(2) Subject to regulations 25A and 25B, paragraphs (3) to (11) apply in relation to further information and any other information except in so far as the further information and any other information is provided for the purposes of an inquiry or hearing held under the Act and the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes."

3. Regulation 18(1)-(4) of the Regulations provides:

"(1) Subject to regulation 9, an EIA application must be accompanied by an environmental statement for the purposes of these Regulations.

(2) A subsequent application is to be taken to be accompanied by an environmental statement for the purpose of paragraph (1) where the application for planning permission to which it relates was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, but this is subject to regulation 9.

(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 developer, 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 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) where a scoping opinion or direction has been issued in accordance with regulation 15 or 16, 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 subject to that opinion or direction);
(b) 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
(c) be prepared, taking into account the results of any relevant UK environmental assessment, which are reasonably available to the person preparing the environmental statement, with a view to avoiding duplication of assessment.”

4. It follows that an environmental statement must provide information which enables a conclusion to be made as to whether there are likely significant effects of the proposed development on the environment and provide a description of any identified.
5. An Environmental Statement would normally be expected to address potential impacts on sensitive receptors surrounding the proposal site. For daylight and sunlight this would include residential buildings, open spaces, and other buildings with a particular requirement for daylight and sunlight. Both existing and future proposed receptors are normally addressed; future proposed receptors are often dealt with as part of a more general cumulative assessment within the Environmental Statement.
6. As Dr Littlefair explains in ID52, the Environmental Statement addressed loss of light to existing dwellings at 17-49 Vastern Road and 87-97 Caversham Road. However, it did not include material on the loss of light to the proposed mixed use developments at 80 Caversham Road and 55 Vastern Road (these

developments have since received planning consent). It also did not include material on loss of light to the existing dwellings at 51 Vastern Road.

7. Since then, the Appellants have provided adequate data on the daylight distributions to existing properties, loss of light data for 51 Vastern Road and loss of light data for 55 Vastern Road. These are in the revised SoCG on daylight and sunlight (CD12.6).
8. As at the time of the sunlight and daylight experts giving evidence, data on the loss of light to the proposed developments at 80 Caversham Road was still incomplete. For 80 Caversham Road data had been provided (post Environmental Statement) in the form of coloured diagrams which were difficult to interpret. These data did cover the blocks affected, and the Appellant had provided keys showing the proportions of each façade that would have particular vertical sky components. These showed a proportion of the facades with low VSCs, and this proportion increased in the proposed scenario, but the shading on the diagrams was indistinct and it was not possible to tell the effect on the expected window positions in 80 Caversham Road. This contrasted with the (post Environmental Statement) situation for 55 Vastern Road, where the Appellant had provided clear numerical data on loss of light. Although 80 Caversham Road is an outline scheme, clear numerical data, for example vertical sky components on the facades, can and should be provided for it. In the last 2 weeks (post sunlight and daylight evidence), further information on 80 Caversham has been provided, and Dr Littlefair is of the view that this new information should enable the Inspector to make her decision.
9. The data shows that there would be significant impacts on daylight to 51 Vastern Road, on daylight and sunlight to 55 Vastern Road, and on daylight to 80 Caversham Road. Loss of light to these receptors should therefore have been considered in the original Environmental Statement. As this information was not provided in the original ES, it did not provide the information reasonably required to reach a reasoned conclusion on the likely significant effects of the proposed development. This confirms that the Environmental Statement is not adequate in its coverage, and it does not satisfy the requirements of regulations 18(3) and 18(4).
10. It is open to the Inspector to issue a formal direction and accept the evidence as “further information”. This is necessary in order to take advantage of Regulation 25(2) as the information now provided comes within the definition of “further information” as defined in the Regulations: “*additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application*”.