

EIA Screening: Confidence in Council Judgement

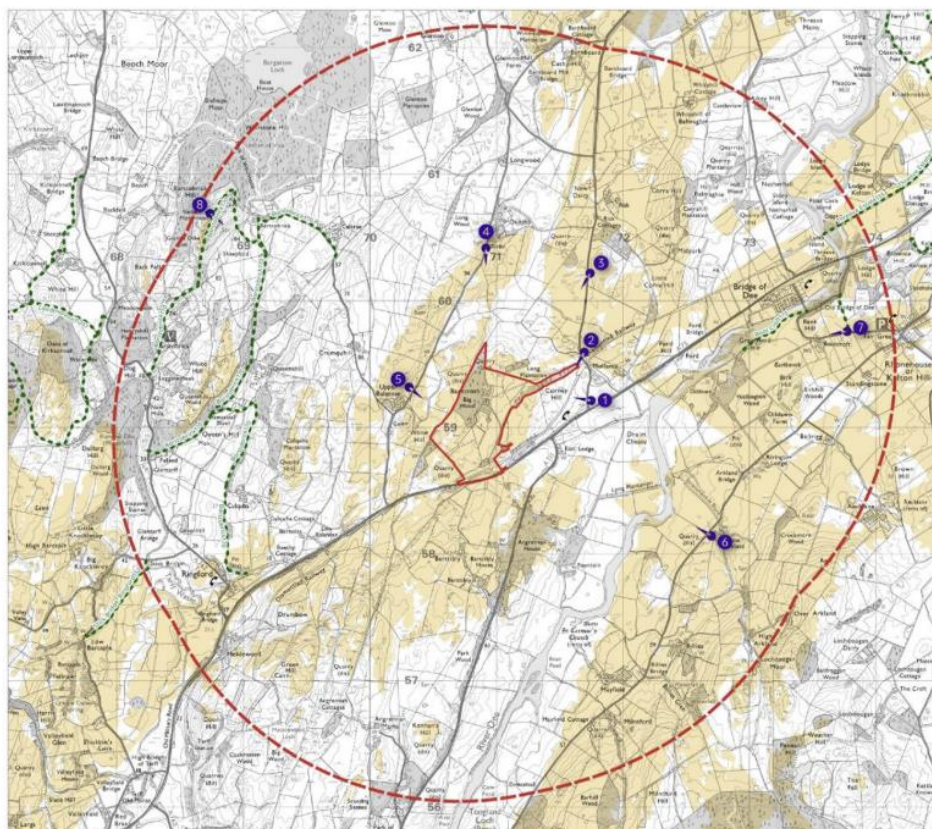


Image: Zone of Theoretical Visibility

Context

An agricultural site had previously been proposed and gained planning permission for a change of use to become a holiday park with numerous bases for caravans and lodges. This original proposal was in 2013 and due to its scale was identified as Schedule 2 development and thus screened by Dumfries and Galloway Council to determine whether an Environmental Impact Assessment (EIA) was required. The resulting screening opinion identified that an EIA was required, which the developer completed and submitted with their application.

This original proposal and its resultant planning permission was not brought forward, and the approval lapsed. A decade later in 2023, a new developer proposed a similar holiday park development on the same land, which was screened by the council under the 2017 EIA Regulations. The related screening opinion was issued in early 2024 and found that there were not likely to be significant effects on the environment, thus concluding EIA was not required.



The difference between the council's opinions a decade apart led to a third-party challenge to Dumfries and Galloway's 2024 screening opinion via a request to the Scottish Ministers to produce a definitive screening determination on whether an EIA was required for the more recent holiday park application.

The purpose of this case study is to highlight that EIA screening involves professional judgment, so differences of opinion and outcome can and will occur, it therefore does not review the detail of the 2013 and 2023 screening decisions, which ultimately were different developments.

What Happened

Barncrosh Farm in Castle Douglas has seen proposals for a change of use of agricultural land to develop a holiday park of lodges and related amenity facilities come forward over the last 15 years. The difference in the outcome of the council's judgement in making an EIA screening opinion on the original 2012 proposal and a similar 2024 application raised concerns amongst the local community. This led to a local community council challenging the 2024 screening opinion to the Scottish Ministers. A subsequent EIA screening determination for the most recent application was produced.

The outcome of the Scottish Government's EIA screening determination agreed with Dumfries and Galloway's screening opinion that the evidence provided did not indicate a likelihood of significant effects on the environment from the 2024 application. As such, an EIA was not required for the proposed development by the recent developer.

2012 proposal & EIA screening opinion at Barncrosh Farm

In advance of a planning application for the change of use of agricultural land for the siting of 444 bases and holiday lodges, and other associated development in a rural location, Dumfries and Galloway Council undertook its duties within 2011 EIA Regulations (as were relevant at the time) to screening the proposal for EIA. The council duly produced and issued an EIA screening opinion (12/E/2/0034 – see further reading to access the related document).

The formal response was that EIA was required for the development. As a result, an Environmental Statement (as was the terminology at that time) accompanied the planning application which was validated and consulted upon in 2013.

There was considerable community interest in, and opposition to, this application at the time; however, on the merits of the evidence available, including the council's review of the environmental information generated through the EIA process, the development was granted planning permission.



Despite gaining approval the development was never brought forward at Barncrosh Farm and planning permission subsequently lapsed.

2023/24 proposals & EIA screening opinion at Barncrosh Farm

Over a decade later and following the lapse in the site's previous planning permission a new developer sought to apply for a similar style and scale of holiday park with related amenities on the site. A screening request was submitted by the developer in late 2023 and as such, a new screening opinion was required related to this new Schedule 2 development proposed for the site – despite the 2023 proposal being very similar to the previous development that had been screened over a decade before. By this time the council's EIA screening work was conducted under the 2017 EIA Regulations.

A formal screening opinion (23/2529/SCR – see further reading to access the related document) was produced by Dumfries and Galloway Council having duly considered the evidence within the developer's request, the EIA Regulations Schedule 3 criteria and the wider site context. The conclusion of the screening opinion, issued in early 2024, was that significant effects on the environment were not considered likely to result from the proposed development and thus EIA was not required to accompany the forthcoming application for planning permission.

Challenge to the 2024 screening opinion

It may not come as a surprise that the council's screening opinion faced strong opposition and criticism from those opposed to the 2023/24 proposal at Barncrosh Farm. This opposition included concerns raised by the local community council, who disagreed with the 2024 screening opinion. These concerns were particularly focussed on how the 2024 opinions determined an EIA was not required, and how this appeared contradictory to Dumfries and Galloway Council's previous 2012 opinion for a similar application in the same location.

Given the council was satisfied in the judgements it had made in relation to the 2024 screening opinion that has drawn from the available evidence, it highlighted to the community council that if they remained dissatisfied with the outcome, they were able to make a request for a screening direction to the Scottish Ministers. Such a request was made by members of the community council on the 15th of April 2024 (EIA-170-003). This third-party request was considered by the Scottish Minister who agreed to use their powers under Regulation 7(4) of the 2017 EIA Regulations to produce a screening determination.

The Scottish Ministers issued their screening determination on 7th of June 2024 with the finding concurring with Dumfries and Galloway's screening opinion, that the proposal was not EIA development and thus no EIA was required.



Overall Result

While the Scottish Ministers were considering and making their screening direction the planning application was able to be progressed, with submission on 28 March 2024 without an EIA Report. The lack of EIA did not mean that environmental issues were no longer relevant, or potentially material to the decision process and, as such, the developer's submission was supported by a number of supporting documents considering a range of environmental and community related effects. The documentation being in line with that set out alongside the council's screening opinion conclusions with the letter - 23/2529/SCR (see further reading to access the related document).

Ultimately, the outcome of the 2024 planning application was a refusal under delegated powers, due to a lack of information.

Lessons Learned

While few planning authorities will face the particular challenges presented in this case study, there are some useful lessons to learn from the sharing of Dumfries and Galloway's experience:

- The decision a planning authority makes in relation to the conclusion of an EIA screening opinion involves professional judgment.
- Where planning officers make a carefully considered judgement drawing from the evidence available and giving due consideration of the criteria presented in Schedule 3 of the EIA Regulations (2017) the council should have confidence in the resulting screening opinion, even where it is clear the outcome is not going to prove popular to all parties.
- The EIA Regulations afford third parties (e.g. community councils) the opportunity to seek a screening direction from Scottish Ministers, but this process is not something a planning authority should be fearful of when they have confidence in their screening process and EIA capabilities.
- A previous screening opinion related to a specific site and / or similar development may well have relevance to a council's future EIA screening activities, but such documents are not determinative and planning officers must therefore ensure they undertake their EIA screening duties drawing across all the evidence available to them.
- The legislative, policy and wider societal context for planning evolves over time, all of which has the potential to influence the basis upon which a council and its planning officers make their judgements, including those related to their EIA duties. As this real-world example demonstrates, where a substantial period of time has passed (during which both the EIA regulatory and planning policy context in Scotland was updated) the potential to look afresh at a similar development and come to a different EIA screening judgement is not only possible but also able to withstand challenge.



Further Information

The documents below provide further information on the EIA screening documentation to provide further contextual reading for those who want to explore the case in more depth:

2012 Dumfries and Galloway Council EIA Screening Documentation (12/E/2/0034):

- D&G's 2012 Screening response letter for original proposal
- D&G's 2012 Screening Opinion Checklist referenced in the above letter

2024 Dumfries and Galloway Council EIA Screening Documentation (23/2529/SCR):

- D&G's 2024 EIA Screening Opinion letter for the recent proposal
- D&G's 2024 EIA Screening Checklist referenced in the above Opinion

2024 Scottish Ministers EIA Screening Direction (EIA-170-003):

- SM 2024 Screening Direction letter and related appendices

This case study has been prepared in collaboration by Dumfries and Galloway authority and the National Planning Improvement Team at the Improvement Service. We publish good practice case studies identified through our work on the National Planning Improvement Framework and the National Planning Hub. They aim to support the sharing of good practice and build collaboration across the sector in addressing common challenges. Please email us at npi@improvementservice.org.uk if your authority has a good practice case study to share.

