

National Planning Improvement



National Planning Hub:

Environmental Impact Assessment Training Capacity Building Programme

EIA - Introduction to Key Legal Issues for Planning Officers

Welcome & Agenda



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AGENDA

10.30am – Welcome & Agenda, NPH EIA Training Programme and Housekeeping

10.35am - **EIA – Introduction to Key Legal Issues for Planning Officers**

11.10-15am - ***Live Q&A Session***

11.30am

- Close



EIA Training Capacity Building Programme

Nov – Dec 2025: Start-up and *initial EIA support package*

Jan – Mar 2026: *EIA enhancement package*

Engagement - to better define your EIA training needs

- **Baseline Survey** - Complete, with > 170 responses across PA
- **Online workshops** - Seeking EIA confident officers to attend on **12th January**
- **Case studies** - PA interested in co-developing a case study of PA EIA practice

Interested? Email: andy.watts@improvementservice.org.uk

December: 2 x live online events, initial NPH EIA webpages, EIA process & core regulatory references diagrams, plus our first *EIA Explainer* article.

Before 31 March 2026: ~5 live online events + multiple: articles, diagrams, web content.



Housekeeping

- Your microphone and camera have been disabled for this session.
- Please be aware we are recording today's session – to be shared on NPH EIA webpage with slides.
- Any Q+A will be excluded from the recording, so feel free to ask questions without worry.

Q&A



Q&A

- EIA questions for the speaker will be posed in the *Live Q&A* at the end of the presentation.
- If you want to ask a question, use the **MS Teams Q&A** function at any time during the session.
- Click on the Q&A now to see the questions being asked as we go along
- We will read questions out on your behalf.

Technical issues

- Any technical issues should also be raised in the Chat function.



EIA - Introduction to Key Legal Issues for Planning Officers

Today's EIA Learning Objectives

Provide planning officers with a core understanding of the:

- Role of environmental information in deciding planning applications
- Key legal rules and definitions
- Reducing the risk of legal challenge



I FOUGHT
THE LAW,
BUT THE LAW WON



Introduction

- the role of environmental information in deciding planning applications



Section 25 - determinations should be made in accordance with the plan unless material considerations indicate otherwise:

- Does it accord with Development Plan?
- Material considerations
- Material considerations v Development Plan



Relevance of environmental effects of proposed development:

- Compliance with Development Plan policies
- Material considerations



Q – if no EIA is required, can planning permission for a development be refused on the grounds of its environmental effects?



“This procedure - known as Environmental Impact Assessment or 'EIA' - is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the competent authority before it makes its decision.”

[Circular 1/2017]



- Legal rules focus on this (enhanced) process, not the outcome
- Environmental information plays a key role, but decision is not necessarily taken on grounds of environmental impact



For example: Trump International, Menie - planning permission granted Dec 2008 (ref: CIN-ABS-001)

“the economic and social advantages of this prospective development at national, regional and local level are such as to justify, uniquely, the adverse environmental consequences caused by a development on this scale and in this location.”



Key legal rules and definitions



Key legal rule:

- EIA development – planning permission cannot be granted until EIA has been carried out, and environmental information taken into account



Key definition:

- “EIA development”

Procedure:

- Screening



Screening/ project slicing

- general introduction to legal rules



EIA Screening

When is EIA screening needed?

EIA is mandatory for certain types of development - Listed in Schedule 1 EIA Regs – as such a PA led screening process is not required. [Move straight to Scoping]

Case by case PA screening required for many other development proposals

= ***Schedule 2 Development***

PA must produce ***Screening Opinion*** if proposal is listed in Schedule 2 EIA Regs **and...** is **either** at / above a relevant thresholds (generally spatial area based)

Or if any part of the proposal is within a *Sensitive Area*



Legal/ practical difficulties:

- Sch 2 – interpretation difficulties – eg. “urban development projects”
- Guarding against avoiding EIA by project-slicing



Project-slicing – key principles - court decisions:

- Development should not be considered in isolation if in reality it is integral part of an inevitably more substantial development
- Depends on fact specific circumstances – court decisions provide illustrations



Key definition:

- “EIA report”

Procedure:

- Scoping



EIA report

- Must be based on scoping report/ direction (if any)



EIA report – reg 5 – includes (at least):

- descriptions of:
 - the development
 - its likely significant effects on the environment
 - features/ measures to avoid, prevent or reduce likely significant adverse effects
 - reasonable alternatives studied by the developer
- non-technical summary
- any other information specified in Sch 4
- statement of relevant expertise & qualifications of experts



Conclusion/ reducing risk of legal challenge



Risk of legal challenge

- **Screening & scoping – largely involve judgment, so difficult to challenge – eg. Wyndford Estate screening opinion – demolition of 4 tower blocks (approx 600 flats) – Caz Rae v Glasgow C.C. [2025] CSIH 1.**
- **Project-slicing – functional interdependence is hard to prove**



Legal challenge – reducing the risk:

- Check the law and procedures – and follow them – Regulations and court decisions
- Be clear about when a rule must be followed, and when the rule allows you to apply professional judgment
- Decisions/ reports – use the correct legal terminology; give clear reasons



Learning Review

EIA - Introduction to Key Legal Issues for Planning Officers

This online learning event has provided an introduction to:

- Role of environmental information in deciding planning applications
- Key legal rules and definitions
- Reducing the risk of legal challenge



EIA Training Capacity Building Programme

Next Steps

2026: Jan - Mar:

Look out for more NPH EIA live online events in 2026:

- **Thurs 29 January, 10.30am - EIA Screening: Enhancing Planning Officer Confidence & Understanding**

Then at the same 10.30am start fortnightly after that - 12 & 26 February and 12 (&26) March - theme / focus tbc

ALSO – Please regularly check NPH webpages for new EIA articles, diagrams and other content.





Q&A

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Thank You!