

Legal stress-testing of planning applications

What is legal stress-testing?

Legal stress-testing involves carrying out a legal review of a planning application before being lodged to:

- Ensure correct application of the various legal tests
- Weed out any inaccuracies and inconsistencies
- Highlight any information gaps

By flagging information gaps, inconsistencies, or the misapplication of legal tests at an early stage this form of "legal triage" can significantly reduce the risk of delay, a decision being made to refuse permission, or a subsequent successful challenge of a decision by way of judicial review.

The role of the lawyer

It's not the role of the lawyer to second-guess the expert opinions of the consultants who have prepared the various reports. Their role is to engage with the consultants and make sure each report is as complete and accurate as possible, in accordance with the relevant legislation, case law and any applicable

standards/guidelines. They will consider questions such as:

- Is the project description, use of terminology and references accurate and consistent?
- Is there a methodology; has it been applied properly and have the correct legal tests been stated?
- How has the application approached mitigation measures and has the impact analysis considered both construction and operational phases?
- Have any issues raised in pre-application consultation or previous application refusals been properly addressed and is that clear from the documentation?
- Is the information sufficient and complete to allow a robust decision to be made?
- Has any new case-law changed the way a decision maker or court will approach the decision making process?

The primary focus of any stress-testing is usually the AA Screening Report, NIS or EIAR. Particular care needs to be taken in the structure, approach and division of topics in the EIAR.

Prevention is better than cure

The advantages of involving a legal practitioner early in the application process far outweigh the disadvantages. The ability to discuss and agree the structure and format of documents, particularly the EIAR or NIS, before reports are finalised can help streamline the preparation process and ensure a consistent approach from all consultants involved.

Conclusion

From a developer perspective, legally stress-testing a planning application will ensure that the application is legally robust, meaning the planning authority is in the best possible position to make a decision that will stand up to the rigours of judicial review. Our clients tell us time and time again how valuable they find this. We have the experience, the expertise, the resources and the 'team' attitude to ensure this service represents excellent value for money.

For more information, please contact Alison Fanagan, Alan Roberts, Jason Milne or any member of the A&L Goodbody Environmental & Planning team.

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Why stress-test?

01

Inconsistent, incomplete or incorrect application documents can lead to requests for further information; or legal challenges that can delay projects.



02

Failing to properly assess and document environmental impacts in line with the EIA and Habitats Directives will prove fatal to applications on judicial review.



03

Simple gaps or inconsistencies, particularly in the EIAR, AA Screening Reports or NIS, can result in a refusal of permission or a successful judicial review.



04

Inconsistencies in terminology in a planning application might seem immaterial when drafting technical reports, but they can lead to misinterpretation.



05

Clearly demonstrating that a proposed development is 'needed' and fully consistent with policy and plans is vital.



06

SHD applications are vulnerable to refusal (and subsequent JR) on the basis of inadequate documentation, as the Board is not entitled to request further information.



07

Even where the planning authority grants permission, deficiencies in the application remain a major vulnerability if the decision is challenged by way of judicial review.



08

The potential damage information gaps may cause is not confined to environmental documents, but can also be found in reports such as Flood RAs, Traffic IAs and CMPs.

