

INTRODUCTION TO PLANNING, ENVIRONMENTAL IMPACT ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT



Your Town Investment Plan Heads of Terms refer to securing required planning permissions and undertaking Environmental Impact Assessment (EIA) and/or Habitat Regulations Assessment (HRA) – ***what next?***

This note provides Towns with a brief introduction to the planning, EIA and HRA requirements that may be relevant to your TIP projects. It provides a high-level guide for Towns of the steps they should go through to ensure that planning, EIA and HRA requirements are understood and are appropriately reflected in the individual business cases including the project programme.

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What is planning permission, EIA and HRA?

Planning Permission

In simple terms, planning permission is the legal process of determining whether proposed development should be permitted. Planning applications will be granted (possibly subject to certain conditions) or refused. The main responsibility for planning lies with local planning authorities (usually the planning department of the local authority).

The planning process in England is defined through a number of pieces of legislation, the most important being the **Town and Country Planning Act 1990**. The Act requires planning permission to be granted for 'development' (see below for the definition of 'development') prior to it being undertaken. Other important legislation includes:

- The **Town and Country Planning (Development Management Procedure) (England) Order 2015**, which sets out the process to be followed to determine planning applications.
- The **Town and Country Planning (Use Classes) Order 1987 (as amended)**, which puts uses of land and buildings into various categories known as 'Use Classes'¹.
- The **Planning and Compulsory Purchase Act 2004**.
- The **Localism Act 2011**, which introduced new planning powers for local communities, including the opportunity to prepare neighbourhood development plans.

For larger scale infrastructure projects, there are alternative consenting routes available including Development Consent Orders. Further detail is not provided on these routes as part of this note. However, if you consider these routes may be relevant for your projects, please talk to your Town Coordinator about what support you may need.

National guidance on planning is available in the form of the **National Planning Policy Framework** and **Planning Practice Guidance**. It should be noted that in summer 2020, the Government consulted on proposed reforms to the planning system. A summary of these changes and potential implications for Towns is provided in our blog on the [Planning White Paper](#).

EIA

The aim of EIA is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process. EIA is a process of evaluating the likely environmental effects (both beneficial and adverse) of a proposed project, taking into account the environmental, social and economics impacts. It is important to get an early understanding of the potential impacts of your TIP to ensure that avoidance and mitigation measures are incorporated into the project planning.

The EIA Regulations that are most likely to apply to your TIP projects are the **Town and Country Planning (EIA) Regulations 2017** (the EIA Regulations). The EIA Regulations apply the EIA Directive 2014/52/EU "on the assessment of the effects of certain public and private projects on the environment" to the planning system in England². The EIA Regulations apply to certain types of development which are seeking planning permission under the Town and Country Planning Act 1990. If your TIP project is considered to be a Nationally Significant Infrastructure Project (NSIP) Towns should seek advice from experts on the EIA Regulations that apply.

The key components of the EIA process can be summarised as follows:

- EIA Screening to determine whether a proposed development requires an EIA;

¹ Further detail on the changes to the Use Classes Order introduced in September 2020 is set out in our blog on [Greater opportunities for flexible use of Town Centres](#)

² The EIA Regulations transpose the EIA Directive into UK law and will still apply once we have exited the EU. The EIA Regulations may be reviewed and amended in due course as part of government legislation review.

- EIA Scoping to determine which potential impacts are relevant to assess and agree the methodology for the assessment;
- Assessment of impacts to predict and identify the likely environmental effects;
- Mitigation to avoid or reduce the identified likely environmental effects
- Reporting of the EIA in an Environmental Statement;
- Decision-making using the Environmental Statement to inform decision makers; and
- Monitoring to ensure that the mitigation measures are implemented and effectively address the project's impacts.

For further information on EIA Screening refer to our [EIA Screening Guidance note](#).

HRA

HRA is the process that competent authorities³ must undertake to consider whether a proposed development plan or programme is likely to have significant effects on a European site designated for its nature conservation interest. These European sites, also referred to as Natura 2000 sites, include: Special Areas of Conservation (SAC); and Special Protection Areas (SPA).

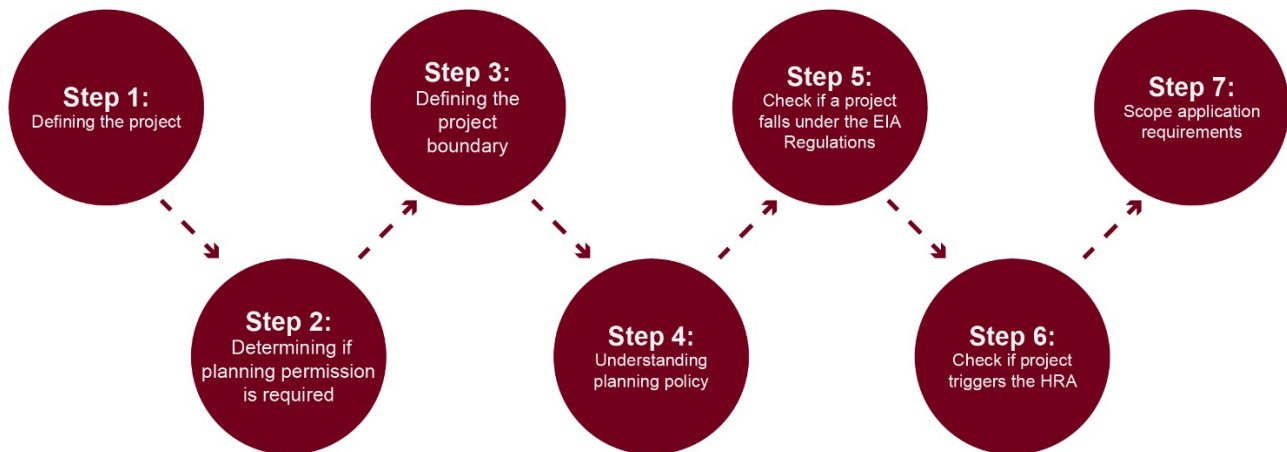
HRA in England is governed by the **Conservation of Habitats and Species Regulations 2017**. These regulations apply the Habitats Directive 92/43/EEC "*on the Conservation of Natural Habitats and Wild Flora and Fauna (the Habitats Directive) protects habitats and species of European nature conservation importance*" to the planning system in England⁴.

³ Local authorities are competent authorities in regard to planning applications.

⁴ The Conservation of Habitats and Species Regulations transport the Habitats Directive into UK law and will still apply once we have exited the EU. The Conservation of Habitats and Species Regulations may be reviewed and amended in due course as part of government legislation review.

Determining if your project requires planning, EIA or HRA

The steps below provides an easy-to-follow process for Towns in determining whether projects will require planning permission, EIA or HRA.



Step 1: Defining the project

The project will have been developed through the Town Investment Plan process and subsequent work to begin to develop the business case for funding. The project will need to be sufficiently defined to determine whether it requires planning permission to be secured and/or EIA or HRA to be undertaken.

Step 2: Determining if planning permission is required

Step 2a. Does the project constitute development?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. You are likely to require planning permission if the project involves:

- Building something new.
- Making a major change to an existing building or structure, such as building an extension.
- Engineering operations (such as groundworks).
- Changing the use of a building or land.

Work that does not constitute 'development' includes:

- Most interior alterations (although mezzanine floors which increase the floorspace of retail premises sometimes require permission).
- Building operations which do not materially affect the external appearance of a building.
- Changing the use of a building or land where the before and after use falls within the same Use Class.

Your local planning authority can provide advice on whether a project requires planning permission.

Step 2b. What is the most appropriate way to secure permission?

There are a range of ways that development can be permitted:

- Some forms of development do not need planning permission. This is known as ‘permitted development rights’. Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. These rights are subject to conditions and limitations to control impacts and to protect local amenity. Further details are set out in **The Town and Country Planning (General Permitted Development) (England) Order⁵**. The EIA Regulations also apply to ‘permitted development’ and require EIA Screening. It should be noted that if a project or development is deemed ‘EIA development’, permitted development rights no longer apply and planning permission would be required.
- There are different forms of planning permission, including outline planning permission (which establishes whether the scale and nature of a proposed development would be acceptable, before a fully detailed proposal is put forward in the form of a reserved matters application) or a full planning permission.
- Permission can be granted more proactively through Local or Neighbourhood Development Orders or Community Right to Build Orders. These Orders grant planning permission for specific types of development in a particular area. In effect, they extend permitted development rights in a defined area. They are led by local planning authorities or local communities who wish to promote certain types of development. Local Development Orders might be a preferable alternative to planning permission where towns have a cluster of projects in a spatial area (for example a quarter or high street), and/or where the private sector or other organisations will be bringing the project forward.

Separate to planning permission, you may also require Listed Building Consent, Conservation Area Consent, Advertisement Consent and/ or protected species licences. These consents may be required, even if planning permission does not need to be secured.

Step 3: Defining the project boundary

If the project requires planning permission, it will be necessary to define the project, or application, boundary. This should include all land necessary to carry out the proposed development – including land required for access, landscaping and open space, and land required for construction. Planning permission for projects could be secured through a number of individual planning applications or a single overarching application (or a combination) – the boundary will need to reflect this. The boundary for the planning application(s) will also need to fall within the boundary for the Town’s Deal.

Defining the project boundary is important for not only understanding the planning context and constraints (including any spatially-defined planning policies), but also in understanding whether EIA or HRA is required – see below.

Step 4: Understanding planning policy

Where a planning application is required, applicants should consider both national policy (set out in the National Planning Policy Framework), and local planning policy. Local planning policy will be contained in the **development plan**, which usually takes the form of a local plan but may also be supported by other planning documents such as area action plans or supplementary planning documents.

Development plans are made up of the combination of strategic policies which address the priorities for an area, and non-strategic policies which deal with more detailed matters. The development plan is at the heart of the planning system, with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise.

⁵ Further detail on new permitted development rights introduced in September 2020 is set out in our blog on [Updates to Permitted Development](#). Government is also currently [consulting](#) on further changes to permitted development rights, which ends on 28 January 2021.

Step 5: Check if a project falls under the EIA Regulations

The EIA Regulations require an EIA to be undertaken for a project if any part of that development is to be carried out in a “sensitive area” or if the applicable thresholds for Schedule 2 developments are exceeded or met. The EIA Regulations define “sensitive area” as the following:

- Site of Special Scientific Interest (SSSI);
- National Park;
- the Broads;
- World Heritage Site;
- Scheduled Monument;
- Area of Outstanding Natural Beauty (AONB); and
- European Site (i.e. SAC or SPA).

DEFRA’s Magic maps can be used to identify the above sensitive sites:

<https://magic.defra.gov.uk/magicmap.aspx>

Schedule 2 of the EIA Regulations provides descriptions of development and applicable thresholds and criteria for determining if a project requires EIA. If a proposed project is listed in the first column in Schedule 2 of the EIA Regulations and exceeds the relevant thresholds or criteria set out in the second column (sometimes referred to as ‘exclusion thresholds and criteria’) the project needs to be screened by the local planning authority to determine whether significant effects on the environment are likely and hence whether an EIA is required. Projects listed in Schedule 2 which are located in, or partly in, a sensitive area also need to be screened, even if they are below the thresholds or do not meet the criteria.

Projects which are described in the first column of Schedule 2 but which do not exceed the relevant thresholds, or meet the criteria in the second column of the Schedule, or are not at least partly in a sensitive area, are not Schedule 2 development and therefore do not require EIA Screening or EIA.

The EIA Regulations apply to both outline and detailed planning applications, as well as Local Development Orders. For Schedule 2 development, a local planning authority should not make a Local Development Order unless they have adopted a Screening Opinion. If screening identifies likely significant environmental effects, then an Environmental Impact Assessment is required.

For further information on EIA Screening and an EIA Screening Checklist that Towns can use to screen projects against refer to our [EIA Screening Guidance note](#).

Step 6: Check if project triggers the HRA

Generally, if a project is within 2 km of a SPA or SAC, it is considered that the potential for impacts from certain type of projects exists and therefore an Appropriate Assessment⁶ may be required by the competent authority. Depending on the type of project, the site habitat and connectivity with a SPA or SAC, it may be necessary to consider a wider search area. Your nearest SAC and SPA can be found using DEFRA’s Magic maps: <https://magic.defra.gov.uk/magicmap.aspx>

Whilst the responsibility for undertaking the Appropriate Assessment is with the determining authority, the onus is on the Applicant to provide the determining authority with sufficient information to enable them to undertake the Appropriate Assessment. The information that is submitted by the applicant with a planning application is often referred to as a ‘HRA Screening’ or a ‘Shadow HRA’. The information required is likely to include recent ecological surveys which, depending on what the SAC or SPA is designated for, could be quite onerous. For example, for a SPA you may be required to undertake a years’ worth of bird surveys. It is also worth noting that some surveys are seasonally constrained, so it is

⁶ An Appropriate Assessment is an assessment of the potential adverse effects of a project (in combination with other projects) on a SAC or SPA,

important that the requirement for surveys is established early in your project to ensure they are factored into the project programme.

Step 7: Scope application requirements

Where it is the intention for the Town to secure planning permission for the TIP projects, the business case will need to account for the cost of preparing the application and supporting documents.

There are national mandatory information requirements for submitting a planning application including a standard application form, a location plan and site plan, information on site ownership, a design and access statement (for some types of planning application only), and the correct application fee. There may also be local mandatory information requirements, set by the local planning authority, which will be set out in a local validation list (or similarly named document). The local planning authority will be able to advise on local requirements.

Other supporting drawings and information will be required, depending on the details of the project and the context of the site and the surrounding area. The amount of detail and certainty required for a full planning application is broadly similar to the end of [RIBA Stage 3](#). Less detail is required for an outline planning application (although the detail will subsequently be required in the form of a reserved matters application), and so this might be an approach to be considered if detail is still being developed.

Programme

It is important that the programme for delivery of the TIP allows sufficient time for completion of the planning process, where applicable. The programme for developing and submitting a planning permission will vary depending on the type of planning application, the form and complexity of the project, and the amount of supporting information required. The timescales for preparing an EIA and HRA will largely depend on the surveys required and, in the case of ecology surveys, the seasonal constraints of the surveys. It is important to agree the survey requirements early on with the local planning authority and relevant statutory consultees (i.e. Natural England). Following the completion of the necessary surveys, it can take 4-6 months to complete an EIA and prepare a HRA Screening/Shadow HRA depending on the nature and scale of the proposed development.

Once the planning application has been submitted, and validated by the local planning authority, there is a statutory target determination period of up to eight weeks for minor applications and 13 weeks for major applications⁷. Where an EIA has been required, this rises to 16 weeks. If the local planning authority requires longer than the statutory determination period, it will need to agree a revised determination period with the applicant.

If undertaking EIA Screening, the local planning authority has 21 days to give their Screening Opinion following the submission of a Screening Report containing all the necessary information.

Next steps

If you require further assistance on meeting your planning, EIA or HRA requirements in your Town Investment Plan or projects therein, please talk to your Town Coordinator about what support you may need.

You can also book an [Expert Drop-in Hour](#) with our Planning or Environmental experts.

⁷ Major development can be defined as: residential development of ten or more dwellings / over 0.5ha / buildings of 1,000sqm or more; employment floorspace of 1,000sqm or more; and/or a site area of more than 1ha.

Useful links

National Planning Policy Framework: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Planning Practice Guidance: <https://www.gov.uk/government/collections/planning-practice-guidance>

Guidance on determining whether you need planning permission: <https://www.gov.uk/planning-permission-england-wales>

Guidance on making a planning application: <https://www.gov.uk/guidance/making-an-application>

Guidance on permitted development rights: <https://www.gov.uk/guidance/when-is-permission-required#What-are-permitted-development-rights>

Guidance on Use Classes:

https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use

The EIA Regulations: <https://www.legislation.gov.uk/uksi/2017/571/contents/made>

The HRA Regulations: <https://www.legislation.gov.uk/uksi/2017/1012/regulation/7/made>

DEFRA's Magic map application: <https://magic.defra.gov.uk/MagicMap.aspx>