



# Ryedale District Council

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<b>REPORT TO:</b>	<b>POLICY &amp; RESOURCES COMMITTEE</b>
<b>DATE:</b>	28 June 2007
<b>REPORTING OFFICER:</b>	Council Solicitor Anthony Winship
<b>SUBJECT:</b>	<b>Town &amp; Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999</b>
<b>WARDS AFFECTED:</b>	<b>All</b>

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## 1.0 PURPOSE OF REPORT

Members are advised that this report has been prepared in accordance with the following minute of the Council meeting on 17 May 2007 :

*“ With reference to Minute No. 485 (Central Ryedale Sports Facility & Leisure Operations) Councillor Clark referred to the discussion, as outlined on page 404 of the minutes, that had taken place on part (e) of the recommendation. Councillor Clark reminded Members that his amendment had been ruled out of order and reported that he had that day received a letter of explanation. Councillor Clark requested that the matter be referred to the Policy & Resources Committee for consideration.”*

The purpose of this report is to consider the following matters arising from issues raised by a Councillor at the Extraordinary Council Meeting on 29 March 2007:

- (i) the question of whether or not an Environmental Impact Assessment was required for the proposed Community Sports Centre at Malton Comprehensive School;
- (ii) the relevance of the Barker case to the proposed Community Sports Centre at Malton Comprehensive School;
- (iii) an explanation of why Councillor John Clark's request for an Environmental Impact Assessment was ruled out of order at the Extraordinary Council Meeting on 29 March 2007;
- (iv) to consider an amendment to the Council's Officer Scheme of delegation to streamline the way Officers deal with the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999;
- (v) to consider whether or not a screening direction should be sought from the Secretary of State in relation to whether or not an environmental impact assessment is required.

## **2.0 RECOMMENDATIONS**

- a. That this report be received;
- b. That Council be recommended to amend the Council's Officer Scheme of delegation relating to dealing with the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 by the deletion of the requirement for the Development Control Manager to consult with Ward Members and the Chairman and the Vice Chairman of the Planning Committee;
- c. That the Director of Operations be authorized to take steps to seek a screening direction from the Secretary of State in relation to whether or not an environmental impact assessment is required for any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.

## **3.0 REASONS SUPPORTING DECISION**

- (i) To continually improve the administration by the Planning Service of the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.
- (ii) To secure certainty about whether or not an Environmental Impact Assessment is required in relation to any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.

## **4.0 BACKGROUND**

Members will recall that the Extraordinary Council Meeting on 29 March 2007 debated the issue of the provision of a proposed Community Sports Centre at Malton Comprehensive School.

During that meeting, Councillor John Clark raised an issue concerning the relevance of the European court judgment concerning what he called the case of "London Borough of Bromley and Barker on the White City development" in relation to the proposed Community Sports Centre at Malton Comprehensive School.

## **5.0 INTRODUCTION**

This report is in the following nine parts:-

- (i) Issues raised by Councillor John Clark at the Extraordinary Meeting of Council on 29 March 2007;
- (ii) A summary of the scale of the proposed mega leisure complex at the Crystal Palace Site in London and an analysis of the case of House of Lords and European Court of Justice decision in R (on the application of Barker) v Bromley London Borough Council;
- (iii) A summary of the scale of the proposed Community Sports Centre development at Malton Comprehensive School and the issue of whether or not there is a need for an Environmental Impact Assessment;

- (iv) The relevance of the House of Lords and European Court of Justice decision in R (on the application of Barker) v Bromley London Borough Council to the proposed Community Sports Centre at Malton Comprehensive School;
- (v) An explanation of why Councillor John Clark's request for an Environmental Impact Assessment was ruled out of order at the Extraordinary Council Meeting on 29 March 2007;
- (vi) The merits of amending the Council's Officer Scheme of delegation relating to dealing with the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999;
- (vii) The merits of seeking a screening direction from the Secretary of State in relation to whether or not an environmental impact assessment is required for any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.
- (viii) The legal and financial implications of commissioning an environmental impact assessment in the absence of a legal requirement to do so under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
- (ix) Conclusion.

## **6.0 POLICY CONTEXT**

The recommendations are intended to secure and maintain continuous improvement in the Planning Service in relation to the administration of the requirements relating to the environmental impact assessment regulations and the other work of the unit.

The Council does not have a policy in relation to requiring an Environmental Impact Assessment as defined in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, when there is no legal obligation to provide one under those regulations.

## **7.0 REPORT**

### **(i) Issues raised by Councillor Clark at the Extraordinary Meeting of Council on 29 March 2007;**

During the debate relating to the proposed Community Sports Centre at the Extraordinary Council Meeting on 29 March 2007, Councillor Clark verbally raised the following issues:-

- (a) "I would like to have some guidance on the relevance of the European court judgment in relation to the London Borough of Bromley and Barker on the White City development";
- (b) Councillor Clark proposed the following amendment:

"The Council carries out a full Environmental Impact Assessment before proceeding any further. This to be

submitted to the planning committee from the applicant, I can't see any problem with that."

Councillor Schroeder asked Councillor Clark to clarify what kind of development he thought the Barker case concerning the White City development comprised.

This information was not forthcoming.

It is worth pointing out at the outset the following matters:-

- (1) that the Member for the Cropton Ward raised the above issues without any prior discussion with Council Officers;
  - (2) the Member for the Cropton Ward did not know what relevance the Barker case was to the proposed Community Sports Centre development at Malton Comprehensive School;
  - (3) the Member for the Cropton Ward was unable to answer Councillor Schroeder's question about what the nature and scale of the development was in the Barker case;
- (ii) **A summary of the scale of the proposed mega leisure complex at the Crystal Palace Site and an analysis of the case of House of Lords decision R (on the application of Barker) v Bromley London Borough Council;**

The issue of the need for Environmental Impact Assessments at the application for approval of reserved matters stage has been the subject of Court cases in the House of Lords and the European Court of Justice.

The Barker case related to a proposed large scale leisure development at the Crystal Place site in London which was opposed by the Crystal Palace Campaign.

The Crystal Palace Campaign (CPC) was established in May 1997 by a group of local residents who were alarmed and angered by proposals to place a mega-multiplex leisure development on 12 acres of the Grade II listed Crystal Palace Park London (the listing means that the Park is entered in the English Heritage Register of Historic Parks and Gardens as being of special historic interest).

The leisure complex development was also opposed by Ms Diane Barker who lives with her daughter in London on a street called Anerley Hill. The entrance to the site of the former Crystal Palace is on the same street. It provides access to Crystal Palace Park, which she and her child use for pleasure and recreation.

In 1997 London & Regional Properties Ltd ("L&R") made an outline planning application for "the development of leisure and recreational facilities, car park deck and associated ramps and surface car parking"

The floor area of the proposed new buildings was said to be approximately 52,130 square metres. The number of proposed parking spaces was 1,200.

There is no dispute that Bromley London Borough Council did not require an Environmental Impact Assessment to be obtained at the outline stage, and that it was advised by its officers that there was no such requirement as a matter of law.

On 29th July 1997, the very day of Bromley's Development Control Committee meeting, at which the outline planning application would have been passed, the Secretary of State issued an Article 14 Direction. This holding order effectively prevented Bromley from granting outline planning permission whilst the Secretary of State considered the application. Instead, therefore, Bromley's Development Control Committee passed a motion to say that they were 'minded' to grant outline planning permission - and the application was put on hold.

In March 1998, 11 months after the initial planning application, the Secretary of State lifted the Article 14 Direction having been satisfied that the proposal did not conflict with the 1990 Crystal Palace Act or the Borough's Unitary Development Plan, and that issues to do with traffic and urban regeneration had been satisfactorily addressed. Bromley were advised that they could determine the application 'as they think fit'. On 24th March 1998 the Borough's Development Control Committee resolved to grant outline planning permission for the L&R application, subject to conditions. Outline planning permission was granted for a building designed to contain an 18/20-screen multiplex, nine restaurants/bars, three cafes, three retail units and three 'leisure boxes' to contain activities such as ten-pin bowling and a 'family entertainment centre'.

On 25 January 1999 L & R submitted an application for the approval of reserved matters. These included an 18 screen multiplex cinema with 4800 seats and a 950 space car park.

The Planning Committee was advised by the Borough Secretary that an Environmental Impact Assessment could not as a matter of law be required at the stage of approving the reserved matters. In the light of that advice the council approved the reserved matters application without an Environmental Impact Assessment on 6 May 1999. A notice of approval was issued on 10 May 1999.

Ms Diane Barker sought judicial review of that decision. The issue in the litigation was whether at the stage of approving the reserved matters, an Environmental Impact Assessment could also be required. Her claim raised issues as to the compatibility of the 1988 Regulations and European Directive 85/337/EEC. The former were intended to transpose into national law the requirements of the latter. The claim failed at first instance and in the Court of Appeal. Ms Barker's appeal to the House of Lords was stayed, pending a preliminary ruling by the European Court of Justice (ECJ) on the interpretation of the directive. Article 1(2) of the

directive defines “development consent” as “the decision of the competent authority or authorities which entitles the developer to proceed with the project”. The matter was therefore referred by the House of Lords to the European Court of Justice.

The European Court of Justice considered two UK cases relating to Environmental Impact Assessments. On May 4, 2006 the European Court of Justice delivered its long awaited judgements on Environmental Impact Assessments and outline permissions in two linked cases: Commission v UK, (Case C-508/03) and the reference from the House of Lords in R. (on the application of Barker) v Bromley LBC (Case C-290/03).

The two cases may be distinguished as follows:

(i) Barker Case (Leisure complex at Crystal Palace Park London)

The Barker case concerned an outline planning permission to develop a large leisure complex in Crystal Palace Park as described above.

(ii) Commission v UK (Retail and Leisure Complex at White City London).

The second case concerned the grant of outline planning permission by the London Borough of Hammersmith & Fulham in 1996 for the development of retail and leisure facilities at White City, which was then under construction.

The European Court held that the classification of a decision as a development consent had to be determined under national law in a manner consistent with Community law. The directive required an Environmental Impact Assessment in the case of a grant of consent comprising more than one stage, if it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue of its nature, size or location.

The House of Lords in its decision delivered in December 2006 allowed the appeal, confirming the European Court of Justice ruling.

The House of Lords, considering this ruling, concluded that the decision to grant outline planning permission and to approve the reserved matters must be considered to constitute, as a whole, a multi-stage development consent for the purposes of the Directive. Accordingly, by precluding any consideration of the need for an Environmental Impact Assessment at the stage when consideration is being given to an application for approval of reserved matters, the 1988 Regulations failed fully and properly to implement the Directive. The flaw in the regulations was that they did not provide for an Environmental Impact Assessment at the reserved matters stage in any circumstances.

The House of Lords decided that a local planning authority which had not carried out an Environmental Impact Assessment before granting outline planning permission for an urban development project misdirected itself when, during the subsequent application to approve the reserved matters, it decided that it had no power to require an Environmental Impact Assessment at that stage.

In the Barker case it was no longer possible to challenge the grant of outline permission on the ground that an assessment had not been required and the House lacked the information that would have been needed for finding as a fact that one had been required at the reserved matters stage. Those issues had in any event been rendered academic by the lapse of planning permission for the development.

The applicant was entitled to a declaration that by precluding any consideration for the need for an assessment at the reserved matters stage the regulations failed fully and properly to implement the Directive and that the council misdirected itself in law when it decided that it had no power to require an assessment to be carried out in accordance with the requirements of the Directive at that stage.

The government will have to change the current Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In the meantime, it should be remembered that the directive (as subsequently amended) still has direct effect

**(iii) A summary of the scale of the proposed Community Sports Centre development at Malton Comprehensive School and the issue whether or not there is a need for an environmental impact assessment;**

The outline planning application LPA reference 06/01168/MOUT for a proposed Community Sports Centre at Malton Comprehensive School comprises a proposed Sports Centre which would comprise :

- |  |         |
|--|---------|
| (i) Sports Centre area (square metres);  | 1300 m2 |
| (ii) Parking, Access and Turning Area (square metres);                         | 3240 m2 |
| (iii) Multi purpose sports pitch on an existing playing field (square metres); | 5500 m2 |
| (iv) 83 car spaces;  |         |

The term 'Environmental Impact Assessment' (EIA) describes a procedure that must be followed for certain types of project before they can be given 'development consent'. The procedure is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects.

European Community (EC) legal requirements for the Environmental Impact Assessment of major projects before development is allowed to go ahead, are contained in Directive 85/337/EEC as amended by Directive 97/11/EC. The effect of the Directive is to require Environmental Impact Assessment to be carried out, before development consent is

granted, for certain types of major project which are judged likely to have significant environmental effects.

For such projects the Directive was given legal effect through the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI No 293)

The Regulations apply to two separate lists of projects:

- (i) Schedule 1 projects', for which EIA is required in every case;
- (ii) Schedule 2 projects', for which EIA is required only if the particular project in question is judged likely to give rise to significant environmental effects.

An Environmental Impact Assessment development must **either**:

- (i) be within Schedule 1 **or**;
- (ii) be within Schedule 2 and be :
  - (a) within a 'sensitive area' **and/or**
  - (b) above thresholds/criteria **and/or**
  - (c) 'likely to have significant environmental effects'.

For the much longer list of Schedule 2 projects, the issue turns on the likelihood of 'significant environmental effects'. For the different types of project described in column 1 of Schedule 2, the 1999 Regulations introduced a system of thresholds and criteria, shown in column 2, as a method of discounting development which is not likely to have significant effects on the environment. For development where the applicable threshold or criterion is not exceeded or met, Environmental Impact Assessment is not normally required. However, even where the threshold or criterion is not met or exceeded, Environmental Impact Assessment may be required if the proposed development is in, or partly in, a 'sensitive area'

Developments which meet or exceed the applicable threshold are considered on a case-by-case basis. For the purpose of determining whether Environmental Impact Assessment is necessary, those of the selection criteria set out in Schedule 3 to the Regulations which are relevant to the proposed development, must be taken into account. The selection criteria fall into the three broad headings: characteristics of the development, location of the development, and characteristics of the potential impact.

The key question is the likelihood of significant environmental effects . For obvious reasons there can be no general definition of what constitutes significance. The question whether a project is likely to have a significant effect on the environment is one of degree which calls for the exercise of judgement. General guidance on how to assess 'significance' is contained in DETR Circular 2/99.



These are very general guidelines and, to assist in their application to particular cases, the Circular also sets out indicative thresholds and criteria by reference to particular categories of development listed in Schedule 2 to the Regulations. Annex A of the Circular sets out indicative thresholds and criteria by reference to particular categories of development.

Essentially DETR Circular 2/99 suggests that there are the following three main criteria of significance:

- Major developments of more than a local importance
- Developments in particularly environmentally sensitive or vulnerable locations
- Developments with unusually complex and potentially hazardous environmental effects

The proposed Community Sports facility at Malton Comprehensive School falls within paragraph 10, (b), Urban Development Projects, of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as it has an overall footprint of over 0.5 Hectares and consideration has been given to whether this particular development would be likely to have significant effects on the environment.

The relevant indicative thresholds contained in Circular 2/99 for the proposed Community Sports facility at Malton Comprehensive School are as follows:-

Column 1 Description of development	Column 2 Application thresholds and criteria	Column 3 Indicative threshold and criteria
10. Infrastructure		
(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;	The area of the development exceeds 0.5 hectare	In addition to the physical scale of such developments, particular consideration should be given to the potential increase in traffic, emissions and noise. EIA is unlikely to be required for the redevelopment of land unless the new development is on a significantly greater scale than the previous use, or the types of impact are of a markedly different nature or there is a high level of contamination.  Development proposed for sites which have not previously been intensively developed are more likely to require EIA if:

Column 1 Description of development	Column 2 Application thresholds and criteria	Column 3 Indicative threshold and criteria
		<ul style="list-style-type: none"> <li>• The site area of the scheme is more than 5 hectares; or</li> <li>• It would provide a total of more than 10,000 square metres of new commercial floorspace; or</li> <li>• The development would have significant urbanising effects in a previously non-urbanised area (e.g. a new development of more than 1000 dwellings).</li> </ul>

The site does not lie within an environmentally sensitive location as defined in the Regulations such as a SSSI, a National Park, the Broads, Area of Outstanding Natural Beauty, World Heritage Site or a Scheduled Ancient Monument.

To summarise, the Senior Planning Officer did not consider that the application proposed is of more than local importance in terms of its environmental effects; it is not located in a particularly sensitive or vulnerable location and would not have any unusually complex or potentially hazardous environmental effects. He was therefore of the opinion that the development would not be likely to have significant effects on the environment by virtue of factors as nature, size or location. Accordingly he adopted the opinion that the development referred to is not Environmental Impact Assessment development as defined in the 1999 Regulations.

**(iv) The relevance of the House of Lords and European Court of Justice decision in R (on the application of Barker) v Bromley London Borough Council to the proposed Community Sports Centre at Malton Comprehensive School.**

In the Barker case, the issue in the litigation was whether at the stage of approving the reserved matters an Environmental Impact Assessment was also required.

Since no reserved matters application has been submitted in relation to the proposed Community Sports Centre at Malton Comprehensive School, the Barker case is not relevant.

**(v) An explanation of why Councillor John Clark's request for an Environmental Impact Assessment was ruled out of order at the Extraordinary Council Meeting on 29 March;**

It has already been noted that Councillor Clark was unable to answer Councillor Schroeder's question referred to above, namely what was the Bromley application for and was it a massive incinerator. It should also

be noted that the Barker case did not relate to the White City development as Councillor Clark appeared to suggest. Councillor Clark therefore appeared to be making a proposal to Council, in the form of an amendment, to commission an Environmental Impact Assessment for the proposed Community Sports Centre at Malton Comprehensive School on the basis of the absence of knowledge about the details of the Barker Case.

The prime responsibility of officers in the matter of all decisions arises in advising Council Members before decisions are reached. It is incumbent, for Councils and Committees to be fully advised on the legal and financial consequences of any proposed course of action. The report should contain a detailed analysis of those factors the officer considers relevant and a note on factors to be disregarded, as well as guidance to members on how decision making should be approached.

Advice may appear unpalatable, but the fact that it has been given and has been considered can save the authority in court proceedings, since the court is concerned to see that the Council has properly applied its mind to the relevant issues.

By raising the issue of the need for an Environmental Impact Assessment without any prior consultation with Officers, Councillor Clark was effectively proposing that the Council should decide to commission an Environmental Impact Assessment in the absence of advice on the legal and financial implications of that course of action. That was considered to be unreasonable and the Chairman is understood to have ruled Councillor Clark's amendment out of order on that basis.

**(vi) The merits of amending the Council's Officer Scheme of delegation relating to dealing with the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.**

Members will be aware that the District Council as the local planning authority has a responsibility to secure the efficient and effective administration by the Planning Service of the procedural requirements of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.

Members are advised that the Council's Scheme of Officer Delegation relating to the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 is as follows :

**DEVELOPMENT CONTROL MANAGER**

*(g) To determine in consultation with the Chairman and Vice-Chairman of the Committee and Ward Members, whether or not an Environmental Impact Assessment is required for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.*

- (h) *In consultation with the Chairman and Vice-Chairman of the Committee and Ward Members, to give and adopt such notices and opinions and to take such other action as may be necessary to ensure compliance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.*

Members are advised that where a developer makes a request to the local planning authority for a screening opinion to determine whether or not an Environmental Impact Assessment is required in relation to a particular development, the local planning authority has only 21 days to adopt a screening opinion beginning with the date of receipt of a request.

Clearly the existing delegation scheme requires a high degree of consultation with Members in relation to what is essentially a professional technical matter.

A comparison between the delegation scheme of Ryedale and that of other neighbouring local authorities in relation to the administration of the procedural requirements of the Environmental Impact Assessment Regulations reveals that the Ryedale Scheme of Officer delegation is out of line with that of most neighbouring local authorities. This is demonstrated in the table below.

Council	Are the Administration of EIA procedures in the Officer Scheme of Delegation?	Does it require consultation with Members ?
Hambleton	Yes	No
Harrogate	Yes	Yes – Cabinet Member of Planning
NYM National Park	Yes	No
Richmondshire	Yes	No
Ryedale	Yes	Yes – Chairman and Vice Chairman of the Planning Committee and Ward Members
York	Yes	No
Scarborough	Yes	No
Selby	Yes	No

Against this background Members are asked to recommend Council to amend the Officer delegation scheme to remove the requirement for the Development Control Manager to consult Ward Members and the Chairman and Vice Chairman of the Planning Committee in relation to the administration of the procedural requirements of the Environmental Impact Assessment Regulations.

Whilst this report does not include data about the numbers of applications for screening opinions, Members are advised that the greater awareness among planning agents of judicial decisions

concerning litigation relating to the Environmental Impact Assessment regulations is forecast to give rise to an increased number of applications for screening opinions in future. The contents of this report are based on that judgement.

**(vii) The merits of seeking a screening direction from the Secretary of State in relation to whether or not an environmental impact assessment is required for any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.**

Members will be aware that Councillor Clark expressed concern at the Extraordinary Council Meeting on 29 March 2007 about the absence of an environmental impact assessment for the proposed Community Sports Centre at Malton Comprehensive School.

Against this background Members may wish to consider initiating a screening direction from the Secretary of State in relation to whether or not an environmental impact assessment is required for any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.

This is a relatively inexpensive way for the Council to seek a definitive determination from the Secretary of State on whether or not there is a need for an environmental impact assessment for any future reserved matters applications or other applications concerning the proposed Community Sports Centre at Malton Comprehensive School.

**(viii) The legal and financial implications of commissioning an environmental impact assessment in the absence of a requirement to do so under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.**

An environmental impact assessment is a very detailed piece of work that sets out details of a project's impact on the environmental and consideration needs to be given to include the following:

- Information describing the project;
- Information describing the site and its environment;
- Assessment of effects including:
  - Effects on human beings, buildings and man-made features;
  - Effects on flora, fauna and geology;
  - Effects on land;
  - Effects on water;
  - Effects on air and climate;
  - Other indirect and secondary effects associated with the project;
  - Effects from traffic (road, rail, air, water) related to the development;
- Mitigating measures;

- Where significant adverse effects are identified, a description of the measures to be taken to avoid, reduce or remedy those effects;
- Risk of accidents and hazardous developments.

The cost of preparing an environmental impact assessment can be considerable. A cost estimate that Council Officers have received for preparing an environmental statement for a project has been £50 - £70,000 (on top of £8,000 for an initial 'Scoping Report'). Developers do not normally incur costs of that magnitude unless there is a legal obligation to do so.

Members have a fiduciary duty to act reasonably when making decisions to incur expenditure. A decision to incur substantial expenditure in commissioning a full environmental impact assessment for the proposed Community Sports building at Malton School when this is not required under the Environmental Impact Assessment Regulations risks being scrutinised by the Council's external auditor.

It is worth noting that Schedule 4 of the Town & Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 specifies the information for inclusion in environmental statements .

DCLG Guidance makes the following point about the contents of environmental statements:

“The comprehensive nature of the checklist [of matters to be considered for inclusion in an environmental statement] should not be taken to imply that all environmental statements should cover every conceivable aspect of a project's potential environmental effects at the same level of detail. They should be tailored to the nature of the project and its likely effects. Whilst every environmental statement should provide a full factual description of the project, the emphasis of Schedule 4 is on the main or significant effects to which a project is likely to give rise. In some cases, only a few of the aspects set out in the checklist will be significant in this sense and will need to be discussed in the statement in any great depth. Other issues may be of little or no significance for the particular project in question, and will need only very brief treatment, to indicate that their possible relevance has been considered.”

This guidance is important in relation to environmental concerns that Councillor Clark has raised in the past about the proposed Community Sports building at Malton Comprehensive School.

For example he has expressed concern about transport emissions associated with users visiting the proposed new facilities by car. The number of car park spaces proposed for the sports building at Malton School is 83 car park spaces.

The scale of development in the indicative threshold and criteria for assessing significance in DETR Circular 2/99 is very much greater than

development proposing 83 car park spaces. It is not clear that the expense of an Environmental Statement could be justified for a development proposing 83 car park spaces.

## **8.0 OPTIONS**

The options in relation to the issues raised in this report are as follows:-

- (1) Amendment of Scheme of Officers Delegation Relegating to Environmental Impact Assessment:
  - (a) Retain the existing delegation scheme with extensive consultation with members;
  - (b) Amend the delegation scheme as recommended in this report;
- (2) Seeking a Screening Direction from Secretary of State:
  - (a) Decline to seek screening direction from Secretary of State;
  - (b) Seek screening direction as recommended in this report;
- (3) Commissioning an Environmental Impact Assessment
  - (a) Commission an environmental impact assessment;
  - (b) Decline to commission an environmental impact assessment.

## **9.0 RESULT OF OPTION APPRAISAL**

### **(1) Amendment of Scheme of Officers Delegation Relating to Environmental Impact Assessments**

The amendment of the officers Scheme of Delegation relating to Environmental Impact Assessment as recommended in this report would bring the delegation scheme for Officers at Ryedale into line with neighbouring local authorities and would contribute to the effective and efficient administration by the Planning Service of the procedures relating to environmental impact assessments.

A failure to amend the Scheme of Officer delegation will hamper the administration of the procedures relating to environmental impact assessment and will be a burden on the scarce human resources in the Planning Services. In addition the Council would be out of line with the procedures of neighbouring local authorities.

### **(2) Seeking a screening direction from The Secretary of State**

The consequences of not seeking a screening direction from the Screening direction from the Secretary of State are likely to be the continual questioning of Council Officers on this issue with the human resources implications that has.

The advantage of seeking a screening direction is that a definitive decision would be made by the Secretary of State which would quickly bring finality to that issue.

**(3) Commissioning an Environmental Impact Assessment in the Absence of a legal requirement to do so**

Commissioning a full environmental impact assessment for the proposed sports building at Malton Comprehensive School in the absence of a legal requirement to do so is likely to result in the Council incurring substantial unnecessary expenditure for a comparatively modest development (especially compared to the indicative threshold in the DETR Circular 2/99)

Employing a cost benefit analysis approach, the cost of Commissioning an environmental impact assessment would appear to outweigh any benefits which may arise given the modest scale of the proposed sports building and the difficulty in assessing transport emissions associated with users visiting new sports facilities.

**10.0 FINANCIAL IMPLICATIONS**

**(1) Amending the Scheme of Officer Delegation**

Amending the Scheme of Officer delegation may be achieved without material financial costs.

Not amending the Scheme of Officer delegation would continue to make the Council's procedures in dealing with environmental impact assessments unnecessarily cumbersome and burdensome in terms of the use of scarce human resources employed in extensive Member consultation and would impede the efficient and effective administration of environmental impact assessment procedures. This may divert scarce human resources from planning application case work with the risk that this may adversely affect the performance indicators for the Planning Service which could reduce the Councils Planning Delivery Grant. It may also adversely affect customer satisfaction levels.

**(2) Seeking a Screening Direction**

Seeking a screening direction from the Secretary of State has no material financial implications.

A failure to seek a screening direction may give rise to the following financial implications:-

- (i) the cost of scarce Officer resources being devoted to continual questions on the issue of environmental impact assessments;
- (ii) the cost arising from essential work being delayed because of officer time being devoted to continual questions on the issue of environmental impact assessments. This may adversely affect the performance indicators of the Planning Service with the risk of a reduction in the Councils Planning Delivery Grant.

**(3) Commissioning an Environmental Impact Assessment in the absence of a legal requirement to do so**



The financial implications of commissioning a full environmental impact assessment when there is no legal requirement to do so are likely to be significant.

Incurring substantial expenditure on an environmental impact assessment when there is no legal requirement to do so in the case of a comparatively modest scale of development may be considered to be a disproportionate and unnecessary step to take.

## **11.0 LEGAL IMPLICATIONS**

Members will be aware from the contents of this report that legal disputes relating to the environmental impact assessment regulations can be and has been a rich seam of litigation.

The recommendations in this report relating to amending the Scheme of Delegation to Officers to improve the efficiency and effectiveness of the administration of the procedural requirements in the environmental impact regulations are likely to reduce the potential for legal challenge.

## **12.0 RISK ASSESSMENT**

The recommendations in this report seek to:-

- (i) Minimise and reduce the risk to the reputation of the Council which would be caused in the event of a failure to comply with the environmental impact assessment regulations by improving the efficiency and effectiveness of the administration of the procedural requirements relating to environmental impact assessment regulations;
- (ii) Minimise and avoid the financial risks identified in this report which are likely to be associated with the continual serial questioning about environmental impact assessments;
- (iii) Avoid the risk of the external auditor challenging a decision to incur substantial expense in commissioning a full environmental impact assessment when there is no legal requirements to do so. Commissioning a full environmental impact assessment only if it is legally required is the low risk option for the Council.

## **13.0 CONCLUSION**

The recommendation in this report are considered to be appropriate based on the issues raised in this report.

### **Background Papers:**

DETR Circular 02/99 – Environmental Impact Assessment.

### **OFFICER CONTACT:**

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