



Department for
Communities and
Local Government

Government response to the technical consultation on environmental impact assessment thresholds



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Introduction

1. The Government are committed to taking forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. An important aim is to secure a proportionate approach to the information required to support planning applications.
2. Environmental impact assessment is a requirement of a European directive¹. It applies a procedure for the assessment of the environmental effects of projects which are likely to have a significant effect on the environment. The environmental impact assessment procedures go beyond those normally required for a planning application. This increases the workload of developers, local planning authorities and the consultation bodies. This can add to the cost of making a planning application and adds time to the decision making process. Therefore subjecting projects, which are not likely to give rise to significant environmental effects, to an environmental impact assessment unnecessarily adds to the time and cost of preparing an application and obtaining planning permission. While it is important that local planning authorities meet their legal obligations, we believe that concern about the risk of legal challenge has led some local planning authorities to require environmental impact assessment for projects which are not likely to give rise to significant effects.
3. The Government announced a series of measures to improve the application of environmental impact assessment in England in the 2012 Autumn Statement. This included a commitment to consult on proposals to change the thresholds for certain types of development, below which significant effects on the environment within the meaning of the directive are not considered likely. Projects that fall below the threshold do not need to be automatically screened to determine whether an environmental impact assessment is needed.
4. We launched a technical consultation on planning which ran from 31 July until 26 September 2014. The consultation included a number of proposals for improving the planning system. Section 5 of the consultation document sought views on proposals to raise some of the size thresholds for screening projects to determine whether there is a need for an environmental impact assessment. The proposals were:
 - The screening threshold for the development of dwelling houses should be increased from the existing 0.5 hectare up to 5 hectares, including where there is up to 1 hectare of non-residential urban development;
 - The threshold for other urban development should be raised from the existing 0.5 hectare to 1 hectare;
 - The threshold for industrial estate development should be raised from the current 0.5 hectare to 5 hectares.

¹ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

5. The consultation made clear that we would like to go further in reducing unnecessary bureaucracy and sought suggestions from consultees on how further deregulation consistent with the European directive's requirements could be achieved. The consultation therefore also sought evidence which would enable further changes to screening thresholds to be made.
6. The consultation asked three questions:
 - a. Question 5.1: Do you agree that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low?
 - b. Question 5.2: Do you have any comments on where we propose to set the new thresholds?
 - c. Question 5.3: If you consider there is scope to raise the screening threshold for residential dwellings above our current proposal, or to raise thresholds for other Schedule 2 categories, what would you suggest and why?
7. This document provides a summary of the technical consultation and our response to each of the three questions posed in section 5 of the document. It should be noted that in considering the responses to this consultation, more weight has been given to the arguments put forward in support of, or against any particular proposal, rather than the absolute number who were for or against. We also took into account the relevant criteria listed in Annex III in the directive when setting screening thresholds and we have taken into account issues raised by consultees when doing this.

Summary of responses to the consultation

8. There were a total of 327 responses to the environmental impact assessment thresholds section of the technical consultation on planning. Responses were received from a wide range of organisations and individuals including developers, statutory consultees and public authorities. The majority of responses came from public authorities, and in particular, from local planning authorities. It should be noted that not all respondents answered all three questions or provided detailed comments to substantiate their response. Some respondents chose to answer one or two questions while others responded to the whole consultation in general terms rather than addressing each question individually.

The table below gives a breakdown of respondents.

Type of respondent	Number of responses	Percentage
Public Authorities	196	60
Voluntary / Community organisations	29	9
Retail or Financial and Professional Services Business	3	1
Land Owners	1	<1
Developers / House Builders	24	7
Professional Institutes / Professionals	34	10
Professional Trade Associations	12	4
Other	28	9
Total	327	100%

Question 5.1: Do you agree that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low?

Summary of consultation responses

9. A majority of respondents (69%) agreed that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low.
10. 156 respondents provided additional comments. Many offered general support for the proposals, particularly as the consultation was clear that screening would still be required in sensitive areas, with some stating the focus on urban development was correct. Several respondents felt that an increase to the threshold would help reduce the current financial and resource burden on local authorities in undertaking screenings.
11. A number of respondents suggested that, while in agreement that the current threshold is too low, it is the specifics of the development and type of site that should be the primary consideration in determining if screening is required. In particular, a number of respondents were concerned about how an increase to the threshold might impact on sites near sensitive areas. Others suggested that the proposed changes were too large, particularly in densely populated urban areas and suggested smaller increases.
12. Some respondents disagreed that the existing thresholds were too low or that screening was a significant cost or led to delays. Other respondents queried how the proposals took account of the selection criteria set out in Annex III of the environmental impact assessment directive. Among the key issues highlighted were:
 - Small scale developments can have impacts depending on location and need consideration on a case by case basis
 - Impacts on air quality from traffic
 - Pollution and nuisances
 - Proximity to sensitive areas
 - The relative abundance, quality and regenerative capacity of natural resources in the area
 - The importance of amenity value to local residents and business
 - Setting of heritage assets
 - Visual impacts
 - Cumulative impacts
 - A threshold based on the area of a site alone does not take account of projects in dense urban areas, particularly where there are tall buildings.
13. Some respondents observed that increasing the thresholds might lead to an increase in requests for screening directions to the Secretary of State. Others cautioned against bringing forward changes as it could increase the risk of legal

challenge with some suggesting that developers will continue to undertake environmental impact assessment voluntarily to avoid to the risk of costly legal challenges.

Question 5.2: Do you have any comments on where we propose to set the new thresholds?

Summary of consultation responses

14. There were 164 responses to the question. The key focus of the responses was on the proposal to increase the screening threshold for dwelling houses to 5 hectares. There were very few comments on the proposal to raise the threshold for other urban development to one hectare or the threshold for industrial estate development to 5 hectares.
15. Some respondents felt that an increase to the threshold for housing to 5 hectares was appropriate. However, others commented that the increase was too substantial. Some suggested that a smaller increase to one or two hectares would be more appropriate, while others felt that there is insufficient evidence to support an increase to the threshold. A number of respondents raised similar concerns to those made in relation to question 5.1 above (including those set out at paragraph 12). In particular, respondents made reference to the impacts of development close to sensitive areas, the fact that smaller development can have significant impacts depending on their nature or location, the cumulative impact of several developments, visual impacts and impacts from traffic including air pollution and noise.
16. A number of respondents suggested that a threshold based solely on hectares is not an effective barometer of how likely a development is to have significant impacts on the environment. It was suggested that there should be some differentiation between urban and rural areas, and that setting a threshold based on building height or the number of dwellings in a development could address the difficulties of a solely area based criterion. The problem identified was that the housing density can be considerably higher than the national average used for the analysis set out in the consultation (i.e. 30 dwelling units per hectare), particularly where there are high rise developments. Some respondents suggested 150 housing units as an alternative to 5 hectares. Some London Borough Councils indicated that this was the scale of housing development that would be referred to the Mayor.
17. There were others that considered that the proposed changes were too small. There were a number of suggestions for thresholds of between 10 and 20 hectares and up to 1000 units.

Question 5.3: If you consider there is scope to raise the screening threshold for residential dwellings above our current proposal, or to raise thresholds for other Schedule 2 categories, what would you suggest and why?

Summary of consultation responses

18. There were 140 responses to this question. In response to the first part of the question about the scope for screening thresholds above the current proposals, several respondents felt that the effects of these proposals should be assessed before considering any further increase. In particular, while some respondents supported the desire to move closer to the indicative threshold of 1000 dwellings, others urged caution. Several comments echoed those made in response to the previous two questions. In particular, there were strong concerns about development close to sensitive areas and how an increase to the threshold should be handled for tall buildings and dense urban areas. Again, the most common suggestion was using number of units as a more effective threshold for residential developments.
19. Respondents offered a wide range of suggestions for raising the thresholds for other Schedule 2 categories. These included raising the thresholds for minerals, solar energy, waste water treatment plants, long distance underground cabling, long distant aqueducts, wind turbines, and other installations for the production of energy. Other respondents suggested more general changes to the screening process such as introducing thresholds for development close to European sites.

Government response to questions 5.1-5.3

20. The significant support for change, particularly from local planning authorities, is welcome. The concerns of some respondents that raising the thresholds could result in some projects which are likely to have significant environmental effects falling below the new thresholds and avoiding an assessment has been noted. However, having taken into account the criteria set out in Annex III of the directive when developing the proposals and having done so again in light of the responses, it is not considered that the higher thresholds will lead to projects likely to have significant effects avoiding assessment.
21. It is accepted that even small scale developments can have impacts, but the directive relates to development which is likely to have significant impacts on the environment. Outside of the environmentally sensitive areas which are defined in the regulations, it is not considered that residential dwellings, other urban development or industrial estate development which are below the proposed thresholds are likely to give rise to significant effects on the environment in terms of the directive. The proposed threshold for residential dwellings has been modified in light of consultation responses to take account of potentially significant effects of high housing density and particularly tower blocks in some urban areas. All proposals which are located in, or partly in, sensitive areas, have to be screened

irrespective of their size. We do not intend to change this. Development below the thresholds is not likely therefore to have significant environmental effects.

22. A few respondents suggested that there should be a buffer zone around sensitive areas within which all projects should be screened. This point is understood but it is unnecessary. The nature, complexity and magnitude of the impacts of housing, other urban development and industrial estates up to the size limits proposed is not likely to be significant in terms of the directive if located outside of sensitive areas. It is worth those respondents who had concern here noting that the National Planning Policy Framework together with environmental protection legislation provides strong protection for areas both inside and outside of the sensitive areas.
23. Many respondents referred to the potential for significant environmental effects of residential tower blocks in urban areas and suggested that a measure for the threshold based on the number of units would be better. We have carefully considered the comments and agree there is a case for changing the threshold for residential dwellings to include a number of units. The threshold has therefore been amended to refer to developments which do not exceed 5 hectares or do not include more than 150 units. This will provide suitable thresholds for both low and high density housing developments respectively and takes account, in particular, of the requirement to consider the impacts of projects in high density areas.
24. There were also concerns about possible cumulative effects of multiple projects coming forward at the same time. However, we have taken this into account and consider that the impacts are not likely to be significant. When setting the thresholds, careful consideration was given to the longstanding indicative thresholds which identify the scale of development, outside of environmentally sensitive areas, that is likely to give rise to significant effects. For example, as explained in the consultation paper, Government guidance states that in relation to urban development, environmental impact assessment 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. The indicative thresholds for sites which have not previously been intensively developed are:
- the site area of the scheme is more than five hectares; or
 - it would provide a total of more than 10,000 square metres of new commercial floor space; or
 - the development would have significant urbanising effects in a previously non urbanised area (e.g. a new development of more than 1,000 dwellings)".
25. The proposed thresholds for dwellings of 150 units would, for example, enable up to six projects which are just below the threshold to come forward in the same area without exceeding the longstanding indicative threshold. Housing projects of this scale are not likely to give rise to significant air, traffic, noise or visual impacts. The indicative threshold for industrial estate developments is 20 hectares, four times higher than the proposed screening threshold.

26. Therefore taking into account all issues raised in the consultation we are confident that developments which will fall below the proposed thresholds will not be likely to have significant effects either alone or in combination with other projects because of their nature, location or impact.
27. As now, there is a “safety net” provided in the Regulations that the Secretary of State can, including in response to a third party request, issue a screening direction for any project irrespective of whether it falls above or below the screening threshold. Therefore, although development below the thresholds will not have significant effects, this does not mean that such projects can never be screened. It is also recognised that increasing the threshold may lead to an increase in the number of requests for screening directions to the Secretary of State, at least initially.
28. We therefore intend to raise the environmental impact assessment screening thresholds in line with our consultation proposals (as set out in paragraph 4 above) but to also include a threshold relating to residential developments of more than 150 units. We will lay regulations in early 2015 which amend the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 to bring these changes into effect.
29. Raising the thresholds will reduce the number of projects that are not likely to give rise to significant environmental effects that are screened unnecessarily. As now, interested parties will continue to be able to make representations on the environmental effects of a project and all planning applications will be subject to the strong environmental protection provisions of the National Planning Policy Framework and, as appropriate, other relevant environmental legislation.
30. The existing directive on environmental impact assessment was amended by a new Directive 2014/52/EU in early 2014. The Government will implement the new requirements by 17 May 2017.