



## Changes to Environmental Impact Assessment Regulations

On 1 September 2008, the **Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008** came into force.

These regulations respond to the ruling of the European Court of Justice on a preliminary reference, made by the House of Lords in *R v London Borough of Bromley, ex parte Barker* in December 2006.

In the *Barker* case, the local planning authority granted outline planning permission for the proposed development of a site in Crystal Palace to provide leisure and recreational facilities. The local authority reserved certain matters for subsequent approval before development was to be commenced. An application was duly submitted for such approval of the reserved matters and, whilst it was being considered by the committee, a number of councillors indicated their wish for a formal Environmental Impact Assessment ('EIA') to be carried prior to approval being given. The committee was advised by the Borough Secretary that an EIA could not, as a matter of law, be required at the stage of approving the reserved matters (i.e. once outline planning permission had already been granted).

When the reserved matters were approved, a judicial review claim was initiated.

The issue for determination was whether the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 fully and properly implemented the terms of EC Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

It was found that it did not, and accordingly a declaration was made that:

- (1) by precluding any consideration for the need for an EIA at the stage when, following the grant of planning permission, consideration is being given to an application for approval of reserved matters, the 1988 Regulations failed fully and properly to implement the Directive
- (2) that the council misdirected itself in law when it decided that it had no power to

require an EIA to be carried out in accordance with the requirements of the Directive at that stage.

The new *Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008* make it clear that an EIA can be required both when applying for outline planning permission and when applying for reserved matters permission. This now brings England fully in-line with the EC Directive.

### Further Information

For further information on this topic or any local government law related matter please contact:

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This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases.