

# Report on EU law, that affects UK planning issues – July 2011

## Introduction

Planning issues in the UK are now inextricably mixed up with environmental and sustainability issues as well as the contentious carbon issue and there are bodies of EU law that directly affect UK planning applications and their approvals. These are summarised below.

The **Habitats & Species Directive 92/43/EEC** of 21 May 1992 created Natura 2000 an EU-wide network of nature conservation sites. Natura 2000 comprises SAC's - Special Areas of Conservation and SPA's - Special Protection Areas, (these were designated under the Habitats Directive (1994) in Europe, and Habitats Regulations (Conservation (Natural Habitats, &c.) Regulations) in the UK.) Natura 2000 sites are protected by a series of very strong tests. The onus is on protection and all Natura 2000 sites are also Sites of Special Scientific Interest (SSSI's).

The Habitats Directive is closely linked to other specific directives concerning the welfare of flora and fauna and planning officers have many guidelines to follow to avoid contravening these regulations.

The **Treaty on the Functioning of the European Union (the TFEU)** and the Chapter I prohibition contained in the **Competition Act 1998** both prohibit, in certain circumstances, agreements, which prevent, restrict or distort competition. Land agreements, which include transfers of freehold interests, leases, assignments of leasehold interests, easements and licences may also be relevant to a planning application and therefore subject to EU law.

**CECODHAS Housing Europe** in their 'home page' states *"The objective of State aid control is, as laid down in the founding Treaties of the European Communities, to ensure that government interventions do not distort competition and trade inside the EU. For us to deliver sustainable neighbourhoods, a long-term perspective and local development strategies designed together with residents is needed. To be compatible with EU competition and internal market rules, we then require recognition of our wide role."*

An example of the application of these rules is a judgement by the European Commission that a 30% interest in state housing by a local authority is too much: so any project planned to include state funding must comply with the competition ethos laid down in the TFEU and reinforced by the Lisbon Treaty.

CECODHAS is also driving for the environmentally friendly housing deemed necessary by KYOTO et al.

The **Strategic Environmental Assessment or SEA Directive (2001/42/EC)** aims at introducing systematic assessment of the environmental effects of strategic land use related plans and programs. It typically applies to regional and local, development, waste and transport plans. An SEA is usually conducted before a corresponding EIA (Environmental Impact Assessment) is undertaken. This means that information on the environmental impact of a plan can cascade down through the tiers of decision making and can be used in an EIA at a later stage.

The SEA within the UK is complicated by different Regulations, guidance and practice between England, Scotland, Wales and Northern Ireland. In the UK, SEA is inseparable from the term sustainability, and an SEA is expected to be carried out as part of a wider Sustainability Appraisal (SA), which was already a requirement for many types of plan before the SEA directive and includes social and economic factors in addition to environmental.

The **Environmental Impact Assessment or EIA Directive (85/337/EEC)** of 1985 includes 2 annexes; Annex I lists typical major projects that might have a significant effect on the environment: and Annex II, generically lists private projects that the host country must assess to determine whether the EIA Directive applies.

The Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 implement the EIA Directive into domestic law; however, the UK transposition has been challenged successfully as being non compliant to the EIA Directive, and has left some grey areas, especially concerning the demolition of all or part of a structure.

The EIA Directive of 1985 has been amended 3 times thus:

- **Directive 97/11/EC** of 1997 brought the Directive in line with the UN ECE Espoo Convention that seeks to ensure that one nation's planning does not adversely affect another;
- **Directive 2003/35/EC** of 2003 sought to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.
- **Directive 2009/31/EC** of 2009 amended Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO<sub>2</sub>).

## **Observation**

There are many possible variations on a planning application and accordingly there are many EU regulations that may apply or even conflict with existing UK law but still be germane to such an application.

Much of the EU influence (by regulation) has already been transposed into various pieces of UK legislation. Only some of these laws have been tested in the courts so it is not possible to reach a firm conclusion apart from observing that most of the direct influence due to original EU legislation focuses on the environment and green issues especially in terms of habitat for flora and fauna protection.

## **References**

<http://www.lbp.org.uk/guidancelaw.html>

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