

EIA CASELAW LESSONS FOR EFFECTIVE PRACTICE

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ENLIGHTENED THINKING

D O N ' T P A N I C

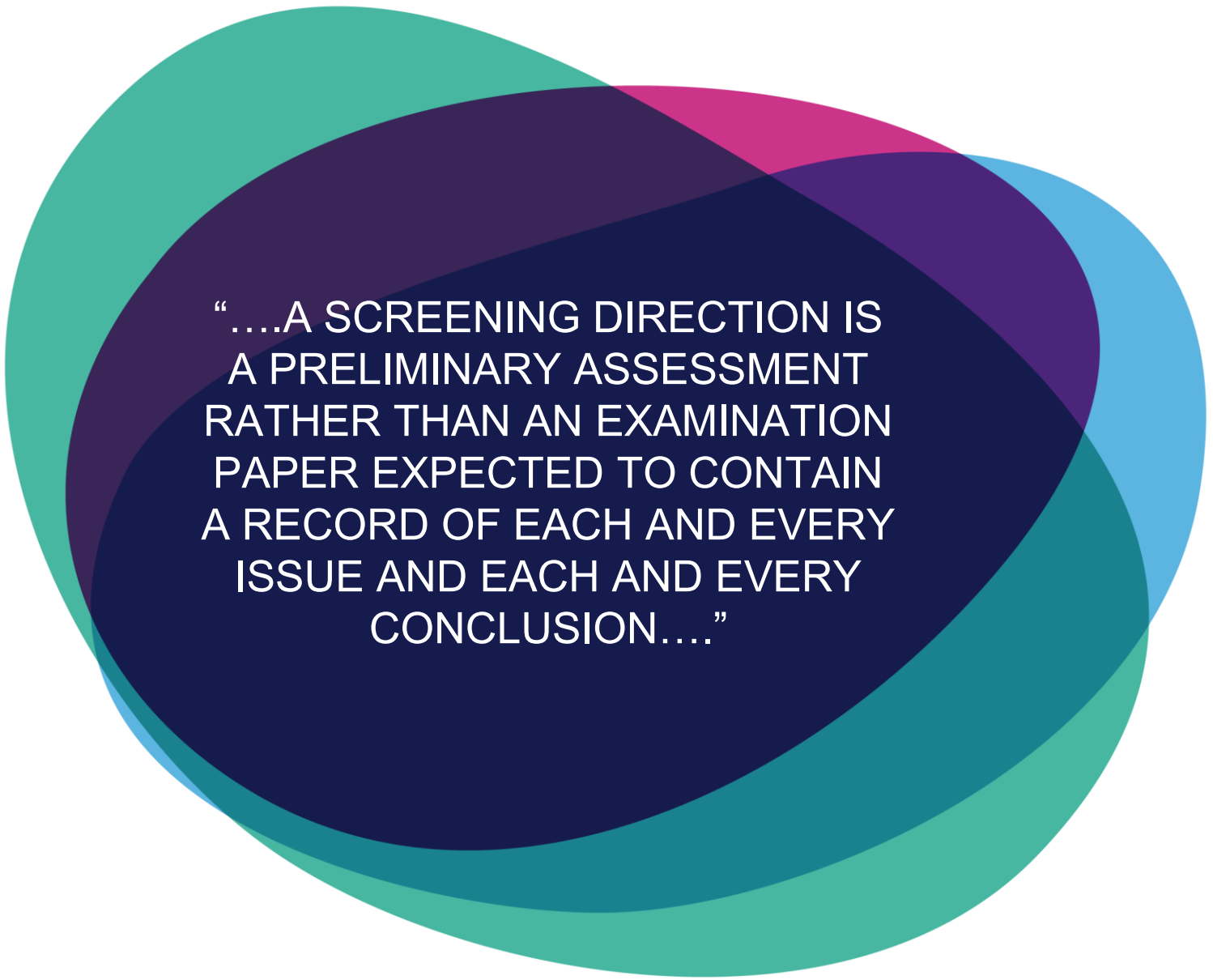


Reminder:

- EIA development – planning permission/ consent cannot be granted until EIA has been carried out
- Screening required - sch 2 development
- Wednesbury reasonableness – courts will not interfere in exercise of judgment, unless irrational/ perverse

SCREENING





“....A SCREENING DIRECTION IS
A PRELIMINARY ASSESSMENT
RATHER THAN AN EXAMINATION
PAPER EXPECTED TO CONTAIN
A RECORD OF EACH AND EVERY
ISSUE AND EACH AND EVERY
CONCLUSION....”

14 March 2023	GCC screening opinion – EIA not required
12 Sept 2023	Reduced of consent – inadequate reasons
13 Oct 2023	2 nd screening opinion – EIA not required
1 Aug 2024	Lord Ordinary held error of law but declined to reduce as same result
14 Jan 2025	Inner House refused reclaiming motion

Caz Rae v Glasgow City Council [2025] CSIH 1

- Screening opinion – demolition of 4 tower blocks (approx 600 flats)
- Planning permission required if EIA development
- Issues:
 - Correct test – likely significant effect or likely significant adverse effect?
 - Mitigation can be taken into account

R. oao Hilltop Experiences v Norfolk CC [2025] EWHC 1447 (Admin)

- New household waste recycling centre
- Screening opinion – although within a sensitive area, not EIA dev
- Challenged – failed to consider:
 - certain types of waste
 - impact on human health

DEFINING THE PROJECT/ SALAMI- SLICING



Myth: width of rule re salami-slicing/ “the project”

- Integral part of wider development
- Functional interdependence - functional relationship is not enough – pumping station

R. (oao Glass Woodin) v Oxford CC [2025] EWHC 489 (Admin)

- Pedestrian and cycle bridge
- OCC had not erred in decision – standalone development not requiring EIA:
 - Development plan policies supported bridge in this location
 - Bridge can go ahead without the future developments
 - “integral”, “key”, “unlocking” – does not mean wider development is contingent on it

ROCHDALE ENVELOPE

R. oao Associated Petroleum Terminals v Sec of State for Transport [2025] EWHC 1992 (Admin)

- DCO – new ferry terminal, Port of Immingham
- Objection – navigational safety of vessels in proximity to existing commercial jetty
- Use of maximum “design vessel” – size adequate for future vessel sizes – 50 year design life
- Legal framework governing navigation and pilotage

R. oao Associated Petroleum Terminals (cont)

- ExA Report
 - Consent sought for berths, not for vessels that would use those berths
 - Not possible to ascertain safe use by max DV until that DV has been fully specified and designed [EIA Regs – “taking into account current knowledge and methods of assessment”]
 - Harbour Master confirmed use by vessel of max DV dimensions would be prohibited until demonstrated could manoeuvre safely in/ out of berths

Lessons for effective practice:

- Screening – judgment, so difficult to challenge
- Salami-slicing – functional interdependence is hard to prove
- Rochdale envelope – courts take pragmatic approach to future uncertainties