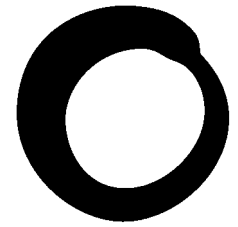


May 2011



**Friends of
the Earth**
Northern Ireland

Consultation response

Draft PPS 24

Introduction

Friends of the Earth is opposed to this draft policy, its underlying assumptions and the damage it will do to an already weakened planning system.

If adopted PPS24 will have far reaching and adverse implications for communities, the business sector and the future of Northern Ireland's environment.

Good planning gives an economy consistency, fairness and direction. This potentially unlawful initiative will result in both a weakening and slowing down of the planning system by increasing the likelihood of legal challenges, contributing to confusion in the interpretation of planning policy and creating inconsistency in decision making. The draft policy is less to do with economic regeneration and more to do with assuaging clientelism within the planning system.

It is unprecedented for a modern planning system to elevate economic interests above all other valid interests and create structural unfairness to small and medium business interests. The role of the planning system is to balance all valid and material interests on a case by case basis in the interests of sustainable development.

Friends of the Earth inspires solutions to environmental problems, which make life better for people.

Friends of the Earth is:

- **dedicated to protecting the environment and promoting a sustainable future for Northern Ireland**
- **the UK and Ireland's most influential environmental campaigning organisation**
- **the most extensive environmental network in the world, with over 60 national organisations across five continents**
- **a unique network of campaigning local groups working in over 200 communities throughout the UK and Ireland**
- **dependent upon individuals for over 90 per cent of its income.**

Friends of the Earth, 7 Donegall Street Place, Belfast, BT1 2FN
Tel: 028 9023 3488 Fax: 028 9024 7556 Email: foe-ni@foe.co.uk Website: www.foe.co.uk/ni

Friends of the Earth Limited, registered in London company number 1012357, registered office 26-28 Underwood Street, London N1 7JQ

Contradicting the new duty of planning

A new statutory purpose of planning is enshrined in the Planning Bill. This was enacted after the draft planning policy statement was announced and renders this draft PPS24 redundant. A duty is placed on the Department to ensure that planning helps to achieve ‘sustainable development’. The Planning Bill also explains that the purpose of planning is to ‘secure the orderly and consistent development of land and the planning of that development.’

Yet on paragraph 1.1 the Department proposes what is effectively a new purpose for the planning system which is “to deliver economic development”. It is clear that sustainable development (the balancing of social, economic and environmental considerations) is not served when this *a priori* policy imperative overrides social and environmental considerations. Having one set of material considerations outweighing social, environmental and community considerations is antithetical to the concept of planning and sustainable development. It is also inevitable that such a policy will not secure ‘order’ and ‘consistency’. The correct approach, based on policy hierarchy, consistency and the plan-led system, will be undermined by this draft policy.

This new hierarchy of material considerations also positions other concerns in opposition, the assumption being that there is always an adversarial relationship between a healthy environment, balanced communities and a prosperous economy. This policy will create tensions in society, increase social division and damage the environment.

The false assumptions behind draft PPS 24

There is a false assumption that economic development in the Programme for Government, as stated in paragraph 1.1 of the draft policy, is the only meaningful priority for the Government and that this should mean that the role of planning is to always reflect that priority. In actual fact the Programme for Government states “...the Executive’s over-arching aim is to build a peaceful, fair and prosperous society”. The two cross cutting key themes are ‘a shared and better future for all’ and ‘sustainability’. The role of the planning system is to both apply the brakes on inappropriate development and to facilitate sustainable development.

In addition ‘significant’ developments, by consolidating resources and draining profits out of Northern Ireland, can compromise small and medium size operations. Even though the Government recognises that a strong SME sector is essential for economic prosperity, only ‘significant’ projects will be subject to preferential treatment under this draft policy. There is a lack of clarity of the significance test and a lack of recognition that our economic prosperity relies to a large extent on a diverse range of business. A development can also have economic benefits to the local economy yet be disadvantageous to the regional economy and vice versa. Yet this policy does not differentiate between the local, regional and sub-regional implications of economic development.

Another false assumption is that economic interests are inherently positive. In proposing that economic implications that are ‘significant’ can effectively outweigh all social, community and environmental issues we could be faced with the scenario, for example, of consent being automatically given to out of town shopping centres leading to net job losses and compromising other more legitimate economic interests. Another example is that regional airport expansion creates not just many environmental concerns but research has shown that

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they invariably draw wealth from local UK economies to other European destinations. The draft policy does not address the need for robust independent, long term economic analysis or criteria against which to assess economic implications. The truth is we can never rely on a private sector body to present accurate and often commercially confidential evidence to support an economic argument or to provide adequate information on the negative economic implications of its own developments.

This draft policy is challengeable on legal grounds

There are two sets of concerns. Firstly, communities and rival developers will expose loopholes in this policy through the courts and, secondly, this draft policy is likely to be subject to a direct legal challenge.

Commercial interests will use the vagueness in this draft policy to challenge competitors in the courts. Far from having a system that “adapts flexibly and quickly to the many challenges facing the economy” (paragraph 1.2) arguments over the economic implications of a development will be questioned and debated in the absence of a legal framework and a policy history of interpreting ‘economic weight and economic significance’. It should be acknowledged that the planning system contains no economists qualified in economic analyses or has a recognized tradition and background in economic analyses. As with EIA developments, the developer furnishes the information, often partisan to their interests, but unlike EIA developments there is no legally binding directive or guidance on assessing the adequacy of the information.

A second set of concerns is that the draft planning policy itself may be subject to a successful legal challenge on some or all of the following grounds:

- It is unreasonable in that it presumes against small and medium size businesses;
- The language is vague with many undefined terms (‘significant’; ‘substantial’; ‘can mean determinative’) thereby creating the likelihood of inconsistent decision making and confusion in policy interpretation;
- It compromises the introduction of the plan-led system;
- It conflicts with the new statutory duty;
- It contravenes the European Directive on Strategic Environmental Assessment;
- Whilst the courts accept that matters of planning judgment on the weight given to a material planning consideration are reserved for the planners and not the courts, it may be irrational to introduce a policy that removes judgment from the planners;
- There may be a conflict with the Northern Ireland (Miscellaneous Provisions) Act 2006 which places a duty of sustainable development, namely, “a public authority must, in exercising its functions, act in a way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland.”

A review of PPS 1 is the appropriate vehicle to assess ‘weighting’ and ‘significance’

Economic considerations are already a material planning consideration and it is recognised that economic objectives must be balanced against other objectives. The downgrading of the importance of social and environmental concerns represents such a fundamental review of this long established position that it should only be considered within a review of Planning Policy Statement 1 – General Principles. The Department has signaled its intention to review PPS1 this year.

Furthermore, paragraph 59 of Planning Policy Statement 1 (General Principles) is contradicted by assuming a suite of material considerations (namely economic) can override all other material considerations, especially the local plan.

Failures in the current consultation process and the predetermination of future consultations

There are many examples, even in this brief document, that demonstrate a lack of openness and a predetermination of the consultation process.

On page one of the document, the Department refers to ‘revising’ the document and ‘amending’ the document. It is not acceptable that the abandonment of this policy is not considered an option.

Furthermore, there is no evidence that the Equality Impact Assessment is based on any real evidence. The likelihood is that Section 75 groups will be disadvantaged by the de-prioritisation of social considerations as well as the fact that they are less likely to have the resources to respond to, or challenge, proposals where this policy is invoked. It is most likely that greater social harm will result to disadvantaged areas when development becomes easier to achieve.

More broadly, the adoption of this draft policy is potentially undemocratic by overshadowing the consultative input of the general public and elected representatives in the formulation of other policy. For example, area plans, corporate strategies of local authorities, masterplans etc could all be dismissed as the supremacy of economic considerations will create bias in consultation processes and the predetermination of significant developments.

Summary

The brevity of the draft policy belies a paucity of thinking, political pressure and false assumptions.

This policy is **unnecessary** because economic development is already a material consideration. This policy will be **unworkable** because it is vague and there is a lack of tradition, expertise and skills within the planning system to assess economic appraisals. This policy is paradoxically both **premature** until a review of PPS1 takes place and **out of time** as a new statutory purpose of planning has been passed by the Assembly.

This policy is **confusing** in that it does not define key terms such as ‘significance’ and **unfair** by prejudicing the interests of the SME business sector and dismissing the interests of the environment and disadvantaged communities. It is also **undemocratic** by prejudicing future policy consultations.

This policy is also potentially **unlawful**.